AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

4-12-91
Vol. 56 No. 71

federal register

Friday
April 12, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

4-12-91
Vol. 56 No. 71
Pages 14837-15032

federal register

Friday
April 12, 1991

Briefings on How To Use the Federal Register
For information on briefings in Miami, FL, Chicago, IL, and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue
Room 914
Miami, FL
RESERVATIONS: 1–800–347–1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: May 2, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

Contents

Federal Register
Vol. 56, No. 71
Friday, April 12, 1991

Separate Parts in This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 56, No. 71
Friday, April 12, 1991

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority by the Secretary of Agriculture and General Officers of the Department

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and the General Officers of the Department to delegate the authorities of the Secretary of Agriculture under section 214 of the Tobacco Adjustment Act of 1983 and section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Harry C. Bryan, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250–1400; telephone (202) 382–9494.

SUPPLEMENTARY INFORMATION: Section 214 of the Tobacco Adjustment Act of 1983, as added by section 1557 of the Food, Agriculture, Conservation, and Trade Act of 1990, requires exporters and manufacturers of tobacco and tobacco products to report certain information to the Secretary of Agriculture (hereafter "the Secretary"). Section 214 provides that the information received be submitted by the Secretary to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 requires the Secretary to collect information pertaining to the country of origin of exported raw peanuts and provides that the information be submitted to the above mentioned Congressional Committees.

The delegations of authority of the Department of Agriculture are amended to delegate to the Under Secretary for International Affairs and Commodity Programs the Secretary's authorities set forth in section 214 of the Tobacco Adjustment Act of 1983 and section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 and to further delegate these authorities to the Administrator, Foreign Agricultural Service.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Public Law 96–354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.21 is amended by adding new paragraphs (d)(33) and (d)(34) to read as follows:

§ 2.21 Delegations of authority to the Under Secretary for International Affairs and Commodity Programs.

* * * * *

(d) *Related to foreign agriculture.*

* * * * *

(33) Administer section 214 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 509).

(34) Administer section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958).

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

3. Section 2.68 is amended by adding new paragraphs (a)(36) and (a)(37) to read as follows:

§ 2.68 Administrator, Foreign Agricultural Service.

(a) *Delegations.*

* * * * *

(36) Administer section 214 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 509).

(37) Administer section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958).

For subpart C:

Edward Madigan,
Secretary of Agriculture.

Dated: April 8, 1991.

For subpart H:

Richard T. Crowder,
Under Secretary for International Affairs and Commodity Programs.

Dated: March 27, 1991.

[FR Doc. 91–8663 Filed 4–11–91; 8:45 am]
BILLING CODE 3410–10–M

Animal and Plant Health Inspection Service

7 CFR Parts 320, 330, 352 and 354

[Docket 91–028]

RIN 0579–AA43

User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Final rule.

SUMMARY: We are amending 7 CFR parts 320, 330, 352 and 354, to establish user fees for agricultural quarantine and inspection services we provide in connection with the arrival at ports in the customs territory of the United States of commercial vessels, commercial trucks, commercial railroad

cars, and passengers on commercial aircraft. This action implements section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990 (21 U.S.C. 136a) and section 1203 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508).

The effect of these regulations is to require certain persons to pay fees for agricultural quarantine and inspection services.

EFFECTIVE DATE: May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Charles A. Havens, Chief Operations Officer, Port Operations, PPQ, APHIS, USDA, Federal Building, Room 635, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Background

User Fees for International Inspection Service.

The Food, Agriculture, Conservation and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990, hereinafter referred to as the Farm Bill, authorizes the Secretary of Agriculture to prescribe and collect fees to cover the costs of providing certain agricultural quarantine and inspection services. The services are "agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States,[1] or the preclearance of preinspection at a site outside the customs territory of the United States, of an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car" (section 2509 of the Farm Bill). In this document we will refer to these services as AQI services.

It should be noted that the Farm Bill does not authorize the Secretary of Agriculture to charge a user fee for pedestrians or private vehicles entering the customs territory of the United States.

The Farm Bill establishes a fund in the Treasury of the United States, known as the "Agricultural Quarantine Inspection User Fee Account" (the Account) for the Secretary of Agriculture to use for fees collected for AQI services. All fees collected for AQI services are to be deposited in the Account. Fees collected within a calendar quarter are to be deposited no later than 31 days after the close of that quarter. The Farm Bill further requires the Secretary of the Treasury to reimburse, from the Account, any appropriations accounts that incur costs associated with AQI services for which the Secretary of Agriculture is authorized to collect user fees, if the amounts are provided in advance in appropriation acts. (See section 2509(a)(3)(B)(ii) of the Farm Bill).

[1] The Farm Bill defines "customs territory of the United States" as "[t]he 50 States, the District of Columbia, and Puerto Rico." (§ 2509(f)(2))

Proposed Rule

On February 27, 1991, we published a document in the **Federal Register** (56 FR 8148–8156, Docket Number 90–247) in which we proposed to amend 7 CFR parts 320, 330, 352 and 354, to establish user fees for agricultural quarantine and inspection services we provide in connection with the arrival at ports in the customs territory of the United States of commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft. This action implements portions of the Farm Bill. We also proposed in that document to amend 7 CFR parts 318 and 354, to establish user fees for agricultural quarantine and inspection services we provide in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. These amendments were proposed under authority of 31 U.S.C. 9701 (the User Fee Statute).

We solicited comments concerning our proposal for a 15-day period ending March 14, 1991. We received 61 comments by the date. They were from maritime and shipping interests, both international and domestic, customs brokers, Members of Congress, airlines and travel organizations, state governments, and other interested persons. We have carefully considered the comments received in response to the proposal, and they are discussed below by topic.

User Fees Relating to Passengers Departing Hawaii or Puerto Rico

As explained above, our proopsal included regulations establishing an APHIS user fees for inspection relating to passengers departing Hawaii and Puerto Rico on commercial aircraft destined to other parts of the United States. We received numerous comments addressing this issue. In addition, during the time since we published our proposal, Congress has indicated a desire to consider this issue. According to the *Congressional Record* (102 Cong. Rec. H2031 (daily ed. March 22, 1991)), members of the Committee of Conference on H.R. 1281 (emergency supplemental appropriations for the fiscal year ending September 30, 1991) "* * * are concerned with implementing domestic user fees without specific approval of the Congress. Accordingly, the conferees expect the Animal and Plant Health Inspection Service not to include domestic user fees until the Congress has considered them."

Several issues raised by commenters with respect to these domestic user fees remain unresolved. However, it is our intention to implement domestic user fees and we intend to publish a separate final rule in this regard by April 17, 1991. As part of that document, we will discuss the comments we received which addressed these issues.

Requests for Extension of Comment Period

Many comments requested more time to comment on the proposed regulations. One letter stated that providing less than 30 days for comments was a violation of the Administrative Procedure Act (APA).

We realize the comment period for these regulations was unusually short. However, the APA provides only that: "After notice * * * the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." (See 5 U.S.C. 553(c)) As explained in the proposal, the Animal and Plant Health Inspection Service (APHIS) must institute user fees as soon as possible. Time considerations do not allow for a longer comment period. We believe the comment period provided was reasonable under the circumstances. Moreover, the fact that we received 61 comments, many of which were extensive, leads us to believe that the comment period was adequate.

Request for Delay of Effective Date

Many other comments stated that the effective date of the regulations should be delayed. One letter asserted that providing fewer than 30 days between publication of a final rule and its effective date is a violation of the APA. Among the reasons given for requesting the delay of the effective date of the regulations were to allow adequate time to reprogram computers and to inform and train ticket agents in the new requirement.

We do not agree that providing less than 30 days between publication of a final rule and its effective date is a violation of the APA. The APA allows a shorter period "as otherwise provided by the agency for good cause found and published with the rule." (See 5 U.S.C. 553(d)(3)) Our proposed regulations included an explanation of the time restraints and a finding of good cause.

However, we have determined that the effective date of the regulations should be adjusted to allow affected

parties more time to make necessary preparations to implement the rule. Therefore, instead of the earlier projected effective date of April 1, 1991, user fee requirements will be made effective May 13, 1991. We have amended § 354.3(e)(4)(i) to reflect this change.

Use of Fees—Deficit Reduction v. Augmenting Services

Several comments favored the concept of user fees, but objected to using the fees for deficit reduction. Comments suggested that the fees be used to augment the APHIS budget and improve services.

The Farm Bill authorizes APHIS to collect user fees to cover the full cost of providing certain AQI services and authorizes APHIS to be reimbursed from the Account. However, the Farm Bill also provides that any reimbursements made from the Account are subject to appropriations. Therefore, establishing user fees simply shifts the financial support for certain AQI activities from the general taxpayer to identifiable recipients of these services. We believe that the user fee legislation will allow APHIS to enhance our AQI program; however, any increases must continue to be sought through the appropriations process. We anticipate receiving an appropriation approximating the amount of fees collected under this authority. However, that is a Congressional prerogative over which we have no control.

Future Review and Revision of User Fees

Several comments addressed the issue of revising user fees after they are adopted. As mentioned in our proposed regulations, we intend to monitor our fees throughout the year and review them on at least an annual basis. We will propose to adjust the fees up or down as the review warrants. We will publish, for public comment, any proposed fee changes in the Federal Register.

Increased Cost of Doing Business

Some comments stated that the fees would increase their cost of doing business. We realize that payment of the user fees will increase the up-front cost of doing business. However, as stated in our proposal, having the user, beneficiary, of the service pay for it directly will allow a reduction in general tax receipts.

Collecting Fees Upon Departure of Airline Passengers

Our proposed regulations included a provision that:

[if] the APHIS user fee applies to a passenger departing from the United States and if the passenger's tickets or travel documents were issued on or after May 13, 1991, but do not reflect collection of the APHIS user fee at the time of issuance, then the carrier transporting the passenger from the United States must collect the APHIS user fee upon departure. (proposed § 354.3(e)(4)(i)(B))

Numerous comments stated that it is impractical to collect user fees from airline passengers at the time they depart. According to the comments, passengers with tickets would have to be individually "audited" at the gate, and those whose tickets did not show payment of the APHIS user fee would have to be sent back to the ticket counter for payment of the fee and issuance of another ticket. The comments stated that major delays could occur as a result of this. Comments requested that our airline passenger user fee apply only to tickets issued on or after the effective date of the regulations.

We have carefully considered these comments. In response we have amended the regulations to provide that the APHIS user fee does not need to be collected from passengers traveling after the effective date of the regulations, if their ticket was issued prior to that date. However, the APHIS user fee would have to be collected from other airline passengers traveling after the effective date of the regulations who have not, for whatever reason, paid the fee. We realize that some fees will still need to be collected on departure. However, the number of such fees, and the delays cited in the comments, will be severely reduced. We have amended § 354.3(e)(4)(i)(B) to reflect these changes.

Exemptions in General

Some comments suggested that some or all exemptions from the user fees are unfair. Other comments stated that no user fee should be charged unless a service is provided. The exemptions we proposed fall into three broad categories: Situations where no service is provided by APHIS, and charging a user fee would therefore be unjustifiable; situations where a service is provided, but there is no practical way to collect a fee; and situations where a service is provided and a fee could be collected, but the means of conveyance or the person is exempt under either international law and custom or exempt under a coordinating user fee collection system.

We believe that the exemptions we proposed are both fair and necessary. It is not possible, for both legal and practical reasons and for reasons of fairness, to charge a user fee for every means of conveyance or person which enters the United States. For example, virtually no inspection services are provided along the U.S.-Canadian border. Therefore, it would be unfair to charge persons and means of conveyance crossing that border a user fee. As another example, we are not charging a user fee for private vehicles entering the United States because collecting the fee would cost more than the money received. As a final example, because of privileges traditionally accorded by one government to property and representatives of other governments, APHIS is exempting foreign diplomats arriving in the United States from paying the APHIS user fee.

Exemptions for Certain Airline Employees and Passengers

The proposed regulations exempt on-duty airline crew members from paying the airline passenger APHIS user fee. Many comments requested that we extend this exemption to include other airline employees flying on airline business. Many comments also suggested that certain other passengers be exempt from paying the airline passenger user fee. The comments suggested that senior citizens traveling on open tickets, and any person traveling on non-paying marketing and promotional tickets be exempt from paying the airline passenger user fee.

We have reviewed these comments and have determined that airline employees traveling on official airline business, including "deadheading" crew members, should be exempt from paying the airline passenger APHIS user fee. This conforms to U.S. Customs Service (Customs) regulations. The airline industry indicated that for these passengers, the usual mechanisms for capturing the user fee in the automated fare system and collecting the fee at the point of sale are not present. This occurs because non-revenue documents are used. The airlines have indicated that it would cost more than the amount of the fee to collect it in these cases. If the airlines were to collect these fees from the airline employees, the employee would request that the airlines reimburse them for this as a business expense. Inspecting the airline employees is considered part of the cost of our services to the airlines; therefore, the costs associated with inspecting these airline employees can be recovered under our aircraft inspection user fee, which we intend to propose at a later date. With these changes in the regulations, user fee covering the cost of inspecting airline employees will still be

borne by the airlines, though through a different fee. Section 354.3(e)(2) of the regulations reflects this change.

We are not amending the regulations to exempt senior citizens traveling on open passes or passengers traveling on marketing or promotional tickets from the APHIS airline passenger APHIS user fee. We recognize that fees cannot be collected at the time the ticket is sold since there is no way to know if or how many times the ticket may be used on flights subject to the APHIS user fee. However, these passengers are subject to inspection. If these passengers are traveling on a ticket issued after the effective date of the regulations, the APHIS user fee must be collected from them upon departure.

Overtime in General

Several comments addressed the issue of overtime charges. Under the proposed regulations, the user fee for commercial vessels, trucks, and railroad cars includes the inspection services provided directly to the vehicle, and cargo inspection if the cargo is inspected concurrently with the means of conveyance, regardless of the time of inspection. Only if APHIS is requested to inspect cargo separately from the means of conveyance and outside of normal business hours would overtime charges apply. One comment suggested that "normal business hours" at each port should be adjusted to ensure that an inspector is scheduled to work during any time that inspection might be requested, thereby eliminating overtime charges. Some comments stated that the user fee should include overtime.

We do not believe any changes in the regulations are justified by these comments. Our system for charging overtime is set forth in 7 CFR 354.1 and understood by those affected. Our regular hours of service are 0800–1630 Monday through Friday as stated in the preamble to the proposed rule. As indicated above, those who use our inspection services can avoid overtime charges by having cargo inspected concurrently with vehicle inspection or scheduling inspection requests for normal duty hours.

Overtime for Airlines

Other comments suggested that the regulations specifically state that airlines carrying passengers subject to the airline passenger APHIS user fee are exempt from overtime charges.

We intended to exempt airlines from overtime charges for passenger inspection. Charging overtime for passenger inspections would be excessive, as the cost of providing passenger inspection is already covered by the APHIS user fee for airline passengers. Therefore, we have added new § 354.3(e)(8) to the regulations to include this provision.

User Fees for Intransit and Lay-Over Passengers; Multiple User Fees

Some comments stated that the regulations were not clear as to how the user fees would apply to intransit passengers and lay-over passengers, and they also questioned the payment of multiple user fees, that is, more than one user fee for the same trip. Intransit passengers are passengers who arrive at a port of entry, do *not* proceed through the federal clearance process, and then continue to another destination. Lay-over passengers are passengers who arrive at a port of entry, proceed through the federal clearance process, and then continue to another destination.

Intransit passengers would not pay the international passengers inspection fee for intransit stops since they would not go through the federal clearance process. Intransit passengers would pay the international inspection fee if and when they eventually clear through the federal inspection process at a subsequent port.

As explained above, we have deleted our proposed user fees for passengers departing Hawaii or Puerto Rico on certain domestic airline flights. Therefore, international layover passengers whose layovers occur in Hawaii or Puerto Rico would pay only an international inspection fee.

Marking of Airline Tickets

Airline tickets are marked to show the various fees and taxes which are included in the price of the ticket. Comments indicated some confusion concerning these requirements. Airline tickets include a box where combined federal user fees are recorded. The amount of the APHIS airline passenger fee will be added to all other federal user fees which are also collected on the ticket. No separate mark needs to be applied to the ticket for the APHIS user fee. We are also deleting the requirement that the markings on the ticket must be in accordance with procedures set forth in the ARC Industry Agents Handbook, the SATO Ticketing Handbook, or compatible procedures set forth in the operations manual of the person who collects the APHIS user fee. There are no such procedures at the current time in those handbooks or manuals concerning APHIS user fees. It will be up to the industry to develop a workable system for this purpose by adding markings for collection of the APHIS user fee into markings for other fees collected, such as the Customs and Immigration and Naturalization Service fees, or to develop some other system.

Bundling User Fees Into Airline Fares

One comment suggested that the APHIS user fee for airline passengers be "bundled" into the fare, without any indication to the passenger that it was included. We are making no changes based on this comment. Other Federal user fees which apply to airline passengers are indicated on the ticket. We believe our user fee system should be consistent with those of other federal agencies.

Reporting Procedures

Several comments addressed the issue of reporting procedures for airlines selling space to tour operators and wholesalers. Some stated that the procedures should be simplified; others stated that the requirement should be eliminated for any airline that collects APHIS user fees through the tickets sold.

We have determined, based on these comments, that § 354.3(e)(6) should be amended to state that the reporting requirements apply only to instances in which airlines sell a block of seats and individual airline tickets are not issued for those seats. Under this amendment, airlines would only need to report ticketed sales when collection of the APHIS user fee was not marked on the ticket and remitted to APHIS.

Violation of International Treaties and Agreements

Several comments suggested that the proposed regulations violate the General Agreement on Trade and Tariffs (GATT). The GATT does not apply to persons or means of conveyance; the GATT does apply to cargo. The APHIS user fees apply only to persons and means of conveyance. Moreover, the GATT permits user fees imposed on or in connection with importations, for inspection and quarantine services, if such fees are limited in amount to the approximate cost of services rendered.

One comment suggested that the proposed regulations are inconsistent with the Caribbean Basin Economic Recovery Act because the Conference Report on the Farm Bill instructed the Department of Agriculture to waive the APHIS inspection fees based on "good-neighbor policies with bordering countries." The commenter asserted that imposing user fees on Caribbean nations such as Jamaica is clearly contrary to the goals of this legislation.

The Caribbean Basin Economic Recovery Act provides for duty-free treatment for articles which are the

growth, product or manufacture of a beneficiary country. It does not apply to user fees for inspection of passengers and means of conveyances.

Also, the Farm Bill does not contain any provision for waiving inspection fees based on good neighbor policies with bordering countries. Reliance on the legislative history is misplaced because legislative history cannot change the clear words of the statute. Further, even if the legislative history were reflected in the statute, it would not apply to Caribbean countries because they are not bordering countries of the United States.

Another comment suggested that the regulations violate the US-Jamaican Bilateral Aviation Agreement of 1969. That agreement requires user fees to be "established at reasonable and non-discriminatory levels, consistent with the costs of providing the relevant services and facilities, and be equitably apportioned among categories of users." (Article 10(7)) According to the comment, the APHIS user fees do not meet these criteria.

However, the APHIS user fees do not violate this agreement. It is not clear that the user fees proposed are encompassed by this provision of the Agreement. However, even if they are, they are in compliance with the Agreement. As explained elsewhere in this document, the user fees have been established to accurately reflect the actual cost of providing certain AQI services to individual users of those services. Within each category of service, the user fee is the same. Under these circumstances, we conclude that the APHIS user fees meet the criteria of this Agreement.

Another comment listed the International Civil Aviation Convention (ICAO) and the US air transport agreement with Austria (Austrian agreement) as being violated by the APHIS user fees.

According to the comment, the ICAO Council recommends in ICAO Document 9082/3, that:

> (i) When any significant revision of charges or imposition of new charges is contemplated by an airport operator or other competent authority, appropriate prior notice should, so far as possible, be given 4 to 6 months in advance to the principal users, either directly or through their representative bodies in accordance with the regulations applicable in each State.
>
> (ii) In any such revision of charges or imposition of new charges the airport users should, so far as is possible, be given the opportunity to submit their views to and consult with the airport operator or competent authority. For this purpose the airport users should be provided with adequate financial information.
>
> (iii) Reasonable advance notice of the final decision on any revision of charges or imposition of new charges should be given to the airport users.

These provisions do not impose requirements. Furthermore, according to this document, ICAO applies to "airport operator[s] or other competent authorit[ies]."

We do not believe ICAO applies to APHIS. APHIS is not an airport operator. Neither do we believe APHIS is an "other competent authority" within the intended meaning of ICAO.

However, even if ICAO did apply to APHIS, we believe APHIS has given "appropriate prior notice * * * so far as possible * * * in advance to principal users." We have also given, under the circumstances explained in our proposal, "reasonable advance notice of the final decision on any revision of charges or imposition of new charges * * * to airport users."

Regarding the U.S. air transport agreement with Austria, the comment quotes that agreement as stating that:

> "* * * Reasonable notice shall be given prior to changes in user charges. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges * * *"

This section applies to the charges for use of facilities and services at airport facilities and not inspection services for which APHIS is proposing fees. However, even if it did apply, APHIS has complied with these requirements by publishing the proposed APHIS user fee regulations for comment and by considering and responding to the comments received as a result of that proposal.

Proliferating User Fees

Several comments complained that federal user fees are proliferating, without any clear overall picture of how they will be used or allocated. APHIS has no control over other user fees which may be authorized or imposed by Congress. However, we have coordinated, as much as possible, our user fee collection system with the existing user fee collection system of Customs. By doing this we are attempting to minimize the impact of the user fees. With regard to the use or allocation of APHIS user fees, the Farm Bill is clear—these must be used only by USDA and only for certain AQI services.

Some comments expressed concern that if APHIS adopts the user fees it has already proposed, it will adopt additional user fees in the future. As we stated in our proposal, we do intend to propose user fees covering other AQI services we provide. This is in compliance with authority granted us in the Farm Bill.

Calculation of Fees

Some comments stated that airline passenger, commercial vessel, and commercial railroad car fees were too high. Some comments stated that the fee for commercial railroad cars was too high as compared with the fee for commercial trucks. Other comments questioned whether we should include certain cost factors, for example, agency-level overhead charges and a reserve fund, in calculating fees. Some comments also stated that we would recover more money from our proposed fees than it costs to provide AQI services. Other comments questioned our method of rounding the "raw fee" up to the nearest dollar and the size of our reserve fund.

We did not make any changes in the regulations based on these comments. The initial APHIS user fees are based, in part, on estimates of the traffic volume in various service categories: International passengers, domestic passengers, aircraft arrival, air cargo inspection, vessel inspection, maritime cargo clearance, truck arrival, rail car arrival, and phytosanitary certificates.[2] Costs were assigned directly to a category when the cost directly related to providing the service. Where a cost benefitted all categories of service, it was pro-rated among the categories based on historic direct labor staff hours. The total cost in each service category was divided by activity volume to arrive at a final fee. We estimated activity volume for 1992 by obtaining data for prior years from the Department of Transportation, Customs, and our own records. We adjusted these figures for anticipated changes in volume, based on past changes and on current world conditions which could affect volume, such as the Persian Gulf situation. This calculation provided the "raw fee."

We included administrative costs and a reserve fund in our cost calculations. The Farm Bill provides that we may recover the cost of administering the

[2] APHIS user fees were not proposed for all of the listed service categories. However, to determine the costs applicable to the categories for which APHIS did propose a user fee, it was necessary to gather data on other service categories.

user fee program through the fees collected. The administrative costs which we included in our calculations are those costs we have or will incur as a direct result of developing, collecting, and monitoring the APHIS user fees. The Farm Bill also allowed for a "reasonable" balance in the AQI user fee account. We have determined that a reasonable balance, or reserve, is one-quarter of the annual costs of providing AQI services. This is consistent with the size of reserve funds established by other agencies within the Department. A reserve is necessary to ensure that APHIS has access to funds equal to three months normal operating expense. Payments into the APHIS user fee account will generally be made on a quarterly basis, with monies collected not remitted to APHIS until after the close of the quarter in which they were collected. The reserve fund will also ensure that APHIS has sufficient operating funds in cases of bad debt, carrier insolvency, and fluctuation in activity volumes.

We rounded the "raw fee" up to the nearest dollar. If we were to round down, even if it were only pennies, in certain service categories such as airline passengers, the fee would not fully recover our costs. We cannot recover that shortfall by charging a higher fee for another service category. We also chose to round up to the dollar so that each fee would be an even dollar figure. This makes collection and reporting easier. It also makes our fees consistent with those charged by other Federal agencies. Customs, the Immigration and Naturalization Service, and the United States Trade and Tourism Administration also collect user fees in whole dollar amounts.

Each service category was considered separately. Each category must, through user fee receipts, return enough money to APHIS to cover the cost of providing AQI services to that particular category. Therefore, when computing fees for one category, we cannot take into account the amount of the fees calculated for other service categories.

We intend to review, and revise as necessary, our user fees. If we determine that the fees are recovering more, or less, revenue than is necessary to cover all the cost of providing certain AQI services, we will change the fees. Likewise, if the size of our reserve fund increases beyond one-quarter of annual costs, we will adjust our fees. All fee changes will be published in the **Federal Register** for public comment.

One comment concerning the calculation of user fees had obviously misinterpreted the data presented in our proposed regulations. The comment stated that $20 million is the cost of providing AQI services for 6 months. That is incorrect. AQI services cost approximately $80 million annually, excluding the cost of domestic inspections in Hawaii and Puerto Rico and the cost of inspecting pedestrians and private vehicles at the Mexican border. $20 million is one-quarter of this amount. The commenter may have thought that the $20 million represented one-half of APHIS's AQI costs. However, it represents approximately one-quarter of a year's costs.

Coupling Amount of User Fee and Service or Risk

There were several comments questioning the amount of individual APHIS user fees. Comments suggested that if a means of conveyance poses a greater disease or pest risk, it should pay a higher fee. Other comments suggested the fee should be tied to the length of time an inspection takes or the amount of service provided.

We have carefully considered these comments and determined that no changes are necessary at this time. We realize that the degree of pest or disease risk posed by individual persons or means of conveyance varies. However, the number of variables which determine the actual risk, and, therefore, determine the amount of service or length of time required to provide service, is virtually infinite. A system which attempted to account for the variables would be unwieldy and expensive to administer and would require that the additional expenses would have to be included in the fee calculation.

Prepaid Commercial Railroad Cars

One comment stated that the annual prepayment option for commercial railroad cars was worthless because no railroad car makes enough trips into the United States in a year to justify prepaying. We are making no changes in the regulations based on this comment. The optional prepayment for commercial railroad cars is based on a similar Customs provision. Both the Customs and APHIS prepayment options are based on the same number of trips—20—into the United States in a year.

Miscellaneous Comments

One comment stated that Customs would, under our proposal, have to absorb the cost of collecting APHIS user fees and, therefore, would be less able to provide Customs services. This is incorrect. Under our proposal APHIS would pay Customs, through reimbursable agreements, for collecting APHIS user fees. The ability of Customs to conduct its own services would not be impaired.

Another comment suggested that we structure the fee collection system differently. It suggested that for trucks crossing into the United States from Mexico, we charge the importers the fee, rather than the trucks, and provide stickers to the importers. We are making no changes in the regulations at this time based on this comment as we have no means of collecting a user fee from importers at this time. Similarly, we are making no changes in the regulations based on the comments which suggested we impose a user fee on cargo rather than on vessels.

The Farm Bill authorizes us to charge user fees only for means of conveyance, not for cargo. Therefore, we cannot restructure our fee collection system as suggested by the comment.

One comment stated that the APHIS user fees could constitute a trade barrier between Mexico and the United States. We do not anticipate that this will occur. However, our authority does not require us to consider whether the APHIS user fee would have any impact on international trade. Our authority simply states that we may recover, from the users, the cost of providing AQI services. Therefore, we are making no changes in the regulations based on this comment.

One comment stated that individual railroads should be allowed to pay proposed APHIS user fees directly to APHIS, rather than through a central trade organization. This commenter appears to have misunderstood the regulations. The regulations state that individual railroads, and AMTRAK, must pay the APHIS user fee directly to APHIS (see § 354.3(d)(1)). The Association of American Railroads (AAR) does not remit the fees to APHIS. The AAR, under the regulations, must file monthly statements showing certain data for member railroad companies, including the total APHIS user fee due from each member railroad company.

Other comments stated that the APHIS user fee is a tax, not a fee. We do not agree with this comment. A tax is money paid to support general government operations. A fee is money paid for a specific service. The APHIS user fees are designed to recover and fund the cost of providing specific services. As such, the APHIS user fee is a user fee, not a tax.

One comment suggested that as part of the regulations APHIS should establish an Advisory Committee to monitor operations and use of the APHIS user fee. We are taking no action based on this comment at this time. The

establishment of an Advisory Committee is outside the scope of this rulemaking proceeding.

One comment was received which purported to address the Economic Impact Analysis conducted in conjunction with the proposed regulations. However, the comments actually addressed how fees were calculated and other issues within the proposed regulations. We have attempted to respond to this comment in our discussions above.

One comment requested that "exporters of tobacco should not be subjected to the proposed user fees." The APHIS user fees do not apply to exports or to cargo. Therefore, no changes are made based on this comment.

The proposed regulations indicated that refunds of APHIS user fees collected in conjunction with unused tickets should be netted against the next subsequent remittance. This has been changed from advisory to mandatory to make it uniform and enforceable.

We have made minor non-substantive changes for clarity.

Movement of Passengers From the United States Virgin Islands to Puerto Rico

Because no APHIS inspection services are provided for passengers moving from the United States Virgin Islands to Puerto Rico, we have amended § 354.3(c)(2) to exempt these passengers from payment of an APHIS user fee.

Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, it has been determined that this rule is a "major rule."

The regulatory impact analysis indicates that the implementation of user fees for agricultural quarantine and inspection services would result in total savings to taxpayers of about $25 million in fiscal year 1991 and $77 million in subsequent years. The total discounted value is estimated to be over $268 million over five years. Total public administrative costs to Customs and the Department associated with fee collection are estimated to be about $520,000 in 1991 and $1.4 million in the following years. A discounted cost of about $5.0 million is estimated over the next five years.

The imposition of user fees on international passengers is expected to save taxpayers $15 million in 1991 and $50 million each year thereafter. A total discounted savings of $174 million is expected over the next five years.

The deadweight loss (the loss in consumer surplus associated with decreases in air travel resulting from the fees) are estimated to be $4,978 in 1991, $16,532 in subsequent years ($57,382 discounted over five years) for international passengers. Administrative costs to Customs and the Department for implementing these user fees are estimated to be about $172,000 in 1991, $452,000 in subsequent years ($1.6 million over five years).

User fees on commercial trucks, commercial railroad cars and commercial vessels are expected to accrue a total savings to taxpayers of over $10 million in 1991 and $27 million in each year thereafter ($2.7 million from commercial trucks, $943,000 for commercial railroad cars, and $23 million for commercial vessels). The discounted savings over five years are $11.4 million for commercial trucks, $3.9 million for commercial railroad cars and $96 million for commercial vessels. Public administrative costs for these fees are estimated to be $348,000 in fiscal year 1991 and $924,000 in subsequent years. A discounted value of about $3 million is estimated over the next five years.

The analysis on affected small entities indicates that the impact on airline recordkeeping costs is likely to be insignificant. Airlines currently collect fees for Customs and INS and it is unlikely that these groups, regardless of their size, will incur significant increases in their collection or recordkeeping expenses. Travel agents and tour operators will be unaffected since they do not currently remit these fees.

The impact on small railroad companies is likely to be minor since the $7.00 user fee represents less than 0.005 percent of total revenue for the affected entities. The impact on operating expenses for liner vessels is estimated to be less than 0.05 percent, and a similar magnitude of impact is also expected for bulk vessels. The $2.00 fee assessed on trucks crossing from Mexico into the U.S. is expected to increase operating expenses between 0.12 percent to 2.4 percent for both agricultural and nonagricultural commodities.

Executive Order 12606

We have analyzed these regulations in accordance with Executive Order 12606, and have determined that this rule has no potential impact on the family well-being. We have determined that this rule: does not affect the stability of the family, and particularly, the marital commitment; does not affect the authority and rights of parents in the education, nurture, and supervision of their children; does not help or hinder the family to perform its functions; does not substitute governmental activity for family functions; and does not affect family earnings. We have also determined that the benefits of this action justify any impact they may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family or to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this final rule have been submitted for approval to the Office of Management and Budget. We have requested the Office of Management and Budget to complete its Paperwork Reduction Act review of the information collection provisions on an expedited basis and provide us with a determination by May 13, 1991.

Executive Order 12372

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Lists of Subjects

7 CFR Part 320

Agricultural commodities, Imports, International boundaries, Mexico, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation.

7 CFR Part 330

Customs duties and inspection, Garbage, Imports, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Soil, stone and quarry products, Transportation.

7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants (agriculture), Postal Service, Quarantine, Transportation.

7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (agriculture), Quarantine, Transportation.

Accordingly, we are amending 7 CFR parts 320, 330, 352 and 354 as follows:

PART 320—MEXICAN BORDER REGULATIONS

1. The authority citation for part 320 is revised to read as follows:

Authority: 7 U.S.C. 149 and 150ee; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 320.7 [Amended]

2. In § 320.7, the last sentence is removed and the following is added in its place: "All costs incident to entry, opening, and cleaning shall be paid by the owner or agent in charge. Services of the inspector during regularly assigned hours of duty at the usual places of duty shall be furnished without cost to the person requesting the services, unless a user fee is payable under § 354.3 of this chapter."

§ 320.9 [Removed]

§ 320.10 [Redesignated as § 320.9]

3. In part 320, § 320.9 is removed and § 320.10 is redesignated § 320.9.

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

4. The authority citation for part 330 is revised to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(c).

5. Section 330.107 is revised to read as follows:

§ 330.107 Costs.

All costs (including those incurred under § 330.106 of this part by the government or the owner) incident to the inspection, handling, cleaning, safeguarding, treating, or other disposal of means of conveyance or products, articles, or plant pests under this part shall be borne by the owner. Services of the inspector during regularly assigned hours of duty at the usual places of duty shall be furnished without cost to the person requesting the services, unless a user fee is payable under § 354.3 of this chapter.

Cross reference: See note following § 330.105.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

6. The authority citation for part 352 is revised to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2c.

7. Section 352.14 is revised to read as follows:

§ 352.14 Costs.

All costs incident to the inspection, handling, safeguarding, or other disposal of prohibited or restricted products or articles under the provisons in this part shall be borne by the owner. Services of the inspector during regularly assigned hours of duty at the usual places of duty shall be furnished without cost to the person requesting the services, unless a user fee is payable under § 354.3 of this chapter.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

8. The authority citation for part 354 is revised to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

9. The heading of part 354 is revised to read as set forth above.

10. Part 354 is amended by adding new § 354.3 to read as follows:

§ 354.3 User fees for certain international services.

(a) *Definitions.* Whenever in this section the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

APHIS. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Arrival. Arrival at a port of entry in the customs territory of the United States, or at any place served by a port of entry as specified in 19 CFR 101.3.

Calendar year. The period from January 1 to December 31, inclusive, of any particular year.

Commercial railroad car. A railroad car used or capable of being used for transporting property for compensation or hire.

Commercial truck. A self-propelled vehicle, designed and used for transporting property for compensation or hire. Empty trucks and truck cabs without trailers fitting this description are included.

Commercial vessel. Any watercraft or other contrivance used or capable of being used as a means of transportation on water to transport property for compensation or hire, with the exception of any aircraft or ferry.

Customs. The United States Customs Service, United States Department of the Treasury.

Customs territory of the United States. The 50 States, the District of Columbia, and Puerto Rico.

Person. An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

(b) *Fee for inspection of commercial vessels of 100 net tons or more.* (1) Except as provided in paragraph (b)(2) of this section, the master, licensed deck officer, or purser of any commercial vessel which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchapter D, and which is either required to make entry at the customs house under 19 CFR 4.3 or is a United States-flag vessel proceeding coastwise under 19 CFR 4.85, shall, upon arrival, proceed to Cusoms and pay an APHIS user fee. The APHIS user fee is $544 for each arrival, not to exceed 15 times that amount in a calendar year. The APHIS user fee shall be collected at each port of arrival.

(2) The following categories of commercial vessels are exempt from paying an APHIS user fee:

(i) Foreign passenger vessels making at least three trips a week from a port in the United States to the high seas (including "cruises to nowhere") and returning to the same port in the United States, not having touched any foreign port or place other than in Canada, or taken on any stores other than in Canada;

(ii) Any vessel which, at the time of arrival, is being used solely as a tugboat;

(iii) Vessels used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the vessel is not carrying persons or merchandise for commercial purposes;

(iv) Vessels arriving in distress or to take on bunkers, sea stores, or ship's stores;

(v) Tugboats towing vessels on the Great Lakes; and

(vi) Any vessel which sails only between United States and Canadian ports.

(c) *Fee for inspection of commercial trucks.* (1) Except as provided in paragraph (c)(2) of this section, the driver or other person in charge of a commercial truck which is entering the customs territory of the United States and which is subject to inspection under part 330 of this chapter or under 9 CFR, chapter I, subchapter D, must, upon arrival, proceed to Customs and pay an APHIS user fee. The APHIS user fee is $2 for each arrival.

(2) The following categories of commercial trucks are exempt from paying an APHIS user fee:

(i) Trucks entering the customs territory of the United States from Canada.

(ii) [Reserved]

(3) Prepayment.

(i) The owner or operator of a commercial truck, *if* entering the customs territory of the United States from Mexico *and* applying for a prepaid Customs permit for a calendar year, must apply for a prepaid APHIS permit for the same calendar year. Applicants must apply to Customs for prepaid APHIS permits.[1] The following information, together with payment of an amount 20 times the APHIS user fee for each arrival, must be provided:

(A) Vehicle make, model, and model year.

(B) Vehicle Identification Number (VIN).

(C) License numbers issued by state, province, or country.

(D) Owner's name and address.

(ii) No credit toward the prepaid APHIS permit will be given for user fees paid for individual arrivals.

(d) *Fee for inspection of commercial railroad cars.* (1) Except as provided in paragraph (d)(2) of this section, an APHIS user fee will be charged for each loaded commercial railroad car which is subject to inspection under part 330 of this chapter or under 9 CFR chapter I, subchapter D, upon each arrival. The railroad company receiving a commercial railroad car in interchange at a port of entry or, barring interchange, the railroad company moving a commercial railroad car in line haul service into the customs territory of the United States, is responsible for paying the APHIS user fee. The APHIS user fee is $7 for each arrival of a loaded commercial railroad car, or, if the APHIS user fee is prepaid for all arrivals of a commercial railroad car during a calendar year, an amount 20 times the APHIS user fee for each arrival.

(2) The following categories of commercial railroad cars are exempt from paying an APHIS user fee:

(i) Commercial railroad cars entering the customs territory of the United States from Canada;

(ii) Any commercial railroad car that is part of a train whose journey originates and terminates in the United States, if—

(A) The commercial railroad car is part of the train when the train departs the United States; and

(B) No passengers board or disembark from the commercial railroad car, and no cargo is loaded or unloaded from the commercial railroad car, while the train is within any country other than the United States; and

(iii) Locomotives and cabooses.

(3) Prepayment.

(i) Railroad companies may, at their option, prepay the APHIS user fee for each commercial railroad car for a calendar year. This payment must be remitted in accordance with paragraph (d)(5) of this section.

(ii) No credit toward the calendar year APHIS user fee will be given for APHIS user fees paid for individual arrivals.

(4) Remittance and statement procedures. The Association of American Railroads (AAR), and the National Railroad Passenger Corporation (AMTRAK), shall file monthly statements with the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, within 60 days after the end of each calendar month. Each statement shall indicate:

(i) The number of loaded commercial railroad cars entering the customs territory of the United States from Mexico during the relevant period;

(ii) The number of those commercial railroad cars pulled by each railroad company; and

(iii) The total monthly APHIS user fee due from each railroad company.

(5) Individual railroad companies shall remit the APHIS user fees calculated by AAR, and AMTRAK shall remit the APHIS user fees it has calculated, within 60 days after the end of each calendar month in which commercial railroad cars entered the customs territory of the United States. Montly statements must be sent to the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, and APHIS user fees must be remitted to the United States Department of Agriculture, National Finance Center, COD Field Office, P.O. Box 70791, Chicago, IL 60673.

(6) Compliance. AAR, AMTRAK, and each railroad company responsible for making APHIS user fee payments must allow APHIS personnel to verify the acouracy of APHIS user fees collected and remitted and otherwise determine compliance with 21 U.S.C. 136a and this paragraph. The AAR, AMTRAK, and each railroad company responsible for making APHIS user fee payments must advise the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations, collections, and remittances. The United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, must be promptly notified of any changes in the identifying information submitted.

(e) *Fee for inspection of international passengers.* (1) Except as specified in paragraph (e)(2) of this section, each passenger aboard a commercial aircraft who is subject to inspection under part 330 of this chapter or 9 CFR, chapter I, subchapter D, upon arrival from a place outside of the customs territory of the United States, must pay an APHIS user fee. The APHIS user fee is $2 for each arrival.

(2) The following categories of passengers are exempt from paying an APHIS user fee:

(i) Passengers arriving from Canada whose journey originates in Canada;

(ii) Crew members who are on duty on a commercial aircraft;

(iii) Airline employees, including "deadheading" crew members, who are traveling on official airline business;

(iv) Diplomats, except for United States diplomats, who can show that their names appear on the accreditation listing maintained by the United States Department of State. In lieu of the accreditation listing an individual diplomat may present appropriate proof of diplomatic status to include possession of a diplomatic passport or visa, or diplomatic identification card issued by a foreign government;

(v) Passengers departing and returning to the United States without having touched a foreign port or place other than Canada;

(vi) Passengers arriving on any commercial aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the United States Department of Defense (DOD) are exempted if they have been precleared abroad under the joint DOD/APHIS Military Inspection Program;

(vii) Passengers arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign port; and

[1] Applicants should refer to Customs Service regulations (19 CFR part 24) for specific instructions.

(viii) Passengers transiting the United States and not subject to inspection.

(ix) Passengers moving from the United States Virgin Islands to Puerto Rico.

(3) APHIS user fees shall be collected under the following circumstances:

(i) When through tickets or travel documents are issued indicating travel to the customs territory of the United States which originates in any location other than Canada;

(ii) When through tickets or travel documents are issued in Canada indicating an arrival in the customs territory of the United States following a stopover (layover) in a location other than Canada; and

(iii) When passengers arrive in the customs territory of the United States in transit from a location other than Canada and are inspected by APHIS.

(4) Collection of fees.

(i) Any person who issues tickets or travel documents on or after May 13, 1991, is responsible for collecting the APHIS user fee from all passengers transported into the customs territory of the United States to whom the APHIS user fee applies.

(A) Tickets or travel documents must be marked by the person who collects the APHIS user fee to indicate that the required APHIS user fee has been collected from the passenger.

(B) If the APHIS user fee applies to a passenger departing from the United States and if the passenger's tickets or travel documents were issued on or after May 13, 1991, but do not reflect collection of the APHIS user fee at the time of issuance, then the carrier transporting the passenger from the United States must collect the APHIS user fee upon departure.

(5) Remittance and statement procedures.

(i) The carrier whose ticket stock or travel document reflects collection of the APHIS user fee must remit the fee to the United States Department of Agriculture, National Finance Center, COD Field Office, P.O. Box 70791, Chicago, IL 60673. The travel agent, United States-based tour wholesaler, or other entity, which issues its own non-carrier related ticket or travel document to a passenger who is subject to an APHIS user fee under this part, must remit the fee to APHIS, unless by contract the carrier will remit the fee.

(ii) APHIS user fees must be remitted to the United States Department of Agriculture, National Finance Center, COD Field Office, P.O. Box 70791, Chicago, IL 60673, for receipt no later than 31 days after the close of the calendar quarter in which the APHIS user fees were collected. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717). Refunds by a remitter of APHIS user fees collected in conjunction with unused tickets or travel documents shall be netted against the next subsequent remittance.

(iii) At the same time a remittance is submitted, the remitter must mail a written statement to the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160. The statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment; and

(D) Amount collected and remitted.

(iv) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to "The Animal and Plant Health Inspection Service."

(6) Carriers contracting with United States-based tour wholesalers are responsible for notifying the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, of all flights contracted, the number of spaces contracted for, and the name, address, and taxpayer identification number of the United States-based tour wholesaler, within 31 days after the close of the calendar quarter in which such a flight occurred; *except that,* carriers are not required to make notification if tickets, marked to show collection of the APHIS user fee, are issued for the individual contracted spaces.

(7) *Compliance.* Each carrier, travel agent, United States-based tour wholesaler, or other entity, subject to this section, must allow APHIS personnel to verify the accuracy of the APHIS user fees collected and remitted and to otherwise determine compliance with the 21 U.S.C. 136a and this paragraph. Each carrier, travel agent, United States-based tour wholesaler, or other entity must advise the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations, collections, and remittances. The United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, must be promptly notified of any changes in the identifying information submitted.

(8) *Limitation on charges.* Airlines will not be charged reimbursable overtime for passenger inspection services required for any aircraft on which a passenger arrived who has paid the airline passenger APHIS user fee for that flight.

Done in Washington, DC, this 6th day of April, 1991.

Edward Madigan,

Secretary, U.S. Department of Agriculture.

[FR Doc. 91-8784 Filed 4-11-91; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

7 CFR Part 1425

Cooperative Marketing Associations; Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The proposed rule published in the **Federal Register** on January 22, 1991, (56 FR 2147), amending the regulations at 7 CFR part 1425 is adopted as a final rule without change. The proposed amendment changed the regulations governing cooperative marketing associations to provide that ten days after a cooperative is suspended from further participation in the price support program on behalf of its members, or anytime thereafter, CCC may on demand call all outstanding CCC price support loans made to the cooperative. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Richard M. Ackley, Chief, Cooperative and Analysis Branch, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447-6689.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Departmental Memorandum 1512-1 and Executive Order 12291, and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries,

Federal, State, or local governments or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, no Environmental Assessment or Environmental Impact Statement is needed.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases: Number 10.051; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The regulations governing the eligibility of cooperative marketing associations to receive price support loans and purchases from CCC are set forth at 7 CFR part 1425. The regulations at 7 CFR 1425.7(a) provide that a cooperative may be suspended by CCC from further participation in a price support program if it is determined that the cooperative has not operated in accordance with representations made in the cooperative's application for approval, has not complied with applicable regulations, or has failed to correct deficiencies noted during an administrative review or an audit of the cooperative's operations with respect to a price support program. A suspended cooperative may not pledge additional quantities of otherwise eligible commodities as collateral for CCC loans, but the cooperative has not been required to redeem commodities that are pledged as collateral for loans at the time of the suspension.

Because outstanding loans are not now called when a cooperative is suspended, it may continue to obtain the benefits of price support for commodities included in those loans after it has been determined that the cooperative is not in compliance with price support regulations. In addition, the financial interest of CCC is not adequately protected in those cases where cooperatives are found not to comply with financial requirements contained in the regulations. In these cases, substantial questions concerning title to commodities pledged as collateral to CCC for loans may exist when a cooperative ceases operations.

The regulations at 7 CFR 1421.6 provide that CCC may at anytime accelerate a loan maturity date by providing the producer notice of such acceleration at least 10 days in advance of the accelerated maturity date. This proposed amendment will clarify that this provision for accelerating a loan maturity date also applies to the outstanding loans of cooperatives suspended from further participation in a price support program on behalf of their members.

SUMMARY OF COMMENTS: No comments were received.

List of Subjects in 7 CFR Part 1425

Cooperative, Price support programs, Reporting and recordkeeping requirements.

Final Rule

Accordingly, 7 CFR part 1425 is amended as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

1. The authority citation for 7 CFR part 1425 is revised to read as follows:

Authority: 15 U.S.C. 714b, 714c, and 714j; 7 U.S.C. 1421.

2. 7 CFR 1425.7 is revised to read as follows:

§ 1425.7 Suspension and termination of approval.

(a) *Suspension.* A cooperative may be suspended by CCC from further participation in a price support program if it is determined that the cooperative has not operated in accordance with representations made in the cooperative's application for approval, has not complied with applicable regulations, or has failed to correct deficiencies noted during an administrative review or an audit of the cooperative's operations with respect to a price support program. Such suspension may be lifted upon the receipt of documents indicating that the cooperative has complied with all of the requirements for approval. If such documents are not received within one year from the date of the suspension, the cooperative's approval for participation in a price support program shall be terminated.

(b) *Termination.* (1) CCC may terminate the approval of the cooperative marketing association's ability to pledge commodities as collateral for CCC price support loans by giving the cooperative written notice of such termination.

(2) An approved cooperative may at anytime, upon written notice to CCC, voluntarily terminate the cooperative's participation in a price support program, provided, that the cooperative does not have any outstanding price support loans at the time of voluntary termination.

(c) *Calling loans.* Ten days after the date CCC suspends or terminates the approval of a cooperative to participate in a price support program or anytime thereafter, CCC may on demand call all outstanding CCC price support loans made to the cooperative. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC. If redemption is not made by such date, title to the commodity shall vest in CCC and CCC shall have no obligation to pay for any market value the commodity may have in excess of the principal amount of such loans.

Signed at Washington, DC on April 9, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-8660 Filed 4-11-91; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ASO-30]

Establishment of Transition Area, Elizabethtown, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule; Change of effective date.

SUMMARY: The effective date of the final rule as published in the **Federal Register** on March 12, 1991, Volume 56, page 10363, has been changed from August 22, 1991, to July 25, 1991. This correction is necessary to coincide with the established cycle for aeronautical charts and to meet the charting deadline for the next edition of the Charlotte Sectional Aeronautical Chart. This correction will avoid an additional six-month delay in charting airspace changes. In consideration of the foregoing, I find that it is in the public interest to effect this correction without further public notice and comment.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, telephone (404) 763–7646.

Issued in East Point, Georgia, on March 28, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–8537 Filed 4–11–91; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 90–ASO–26]

Revision of Control Zone and Transition Area, Beaufort, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule; Change of effective date.

SUMMARY: The effective date of the final rule as published in the **Federal Register** on March 12, 1991, Volume 56, page 10364, has been changed from August 22, 1991, to July 25, 1991. This correction is necessary to coincide with the established cycle for aeronautical charts and to meet the charting deadline for the next edition of the Charlotte Sectional Aeronautical Chart. This correction will avoid an additional six month delay in charting airspace changes. In consideration of the foregoing, I find that it is in the public interest to effect this correction without further public notice and comment.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, telephone (404) 763–7646.

Issued in East Point, Georgia, on March 28, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–8536 Filed 4–11–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM87–34–065 et al.; Order No. 500–k]

Natural Gas Pipelines After Partial Wellhead Decontrol, et al.

Issued April 4, 1991.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Order on remand on "Double Crediting" issue, requiring tariff filings, and dismissing proceedings; final rule removing crediting regulations.

SUMMARY: In *American Gas Association* v. *FERC*, 912 F.2d 1496 (DC Cir. 1990), the court generally affirmed Order Nos. 500–H and 500–I, the Commission's final rule with respect to open access transportation under part 284 of the Commission's Regulations. This order responds to the court's limited remand of the issue of "double credits." The Commission finds that the take-or-pay crediting regulations included in part 284 (§§ 284.8(f) and 284.9(f)) did not result in improper double crediting in the situation about which the producers were concerned.

Since the Commission's take-or-pay crediting regulations terminated on December 31, 1990, this order also removes the crediting regulations from part 284. In addition, this order requires that, on or before October 15, 1991, pipelines must modify their tariffs to remove all tariff language related to the implementation of crediting. Pipelines may do this either as part of another rate filing or in a separate filing. Finally, this order dismisses various complaints and petitions for declaratory order or rulemaking, requesting either: (1) That the Commission exercise its authority under section 5 of the Natural Gas Act to modify take-or-pay contracts with producers or (2) that the Commission interpret its crediting regulations.

EFFECTIVE DATE: April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., (202) 208–1274, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

In the matter of

Natural Gas Pipelines After Partial Wellhead Decontrol, Docket No. RM87–34–065; Take-or-Pay Provisions in Producer/Pipeline Contracts, Docket No. RM83–55–000; Pipeline Gas Cut-Back Procedures, Docket No. RP83–124–000; Texas Gas Transmission Corp. v. Amoco Production Co., Docket No. GP86–38–000; Transcontinental Gas Pipe Line Corp. v. Challenger Minerals, Inc., Docket No. GP88–7–000; State of Connecticut v. ANR Pipeline Co., Docket No. GP88–10–000; and Total Minatome Corp., Docket No. GP88–29–000.

ORDER ON REMAND ON "DOUBLE CREDITING" ISSUE, REQUIRING TARIFF FILINGS, AND DISMISSING PROCEEDINGS; FINAL RULE REMOVING CREDITING REGULATIONS

Issued April 4, 1991.

I. Introduction

On August 24, 1990, the United States Court of Appeals for the District of Columbia Circuit affirmed in most part Order Nos. 500–H and 500–I,[1] the commission's final rule with respect to open access transportation under part 284 of the Commission's regulations.[2] This order deals with the court's limited remand of the issue of "double credits." In addition, since the Commission's take-or-pay crediting regulations terminated on December 31, 1990, this order removes the regulations providing for credits, §§ 284.8(f) and 284.9(f) of the Commission's regulations. This order also requires that, on or before October 15, 1991, pipelines must modify their tariffs to remove all tariff language related to the implementation of crediting. Pipelines may do this either as part of another rate filing or in a separate filing. Finally, this order dismisses various complaints and petitions for declaratory order or rulemaking, requesting either: (1) That the Commission exercise its authority under section 5 of the Natural Gas Act to modify take-or-pay contracts with producers or (2) that the Commission interpret its crediting regulations.

II. Background

In Order Nos. 500–H and 500–I, the Commission continued in effect the Order No. 500 crediting regulations (with one modification concerning casinghead and other must-take gas) until the earlier of December 31, 1990, or the date on which a pipeline accepts a GIC certificate.[3] Those crediting regulations

---

[1] Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol, Order No. 500-H, 54 FR 52,344 (Dec. 21, 1989), FERC Stats. & Regs. 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR. 6605 (Feb. 26, 1990), FERC Stats. & Regs. 30,880 (1990).

[2] *American Gas Association* v. *FERC*, 912 F.2d 1496 (DC Cir. 1990) (*AGA II*).

[3] The provision that crediting terminates on the earlier of December 31, 1990 or the date on which a pipeline accepts a GIC certificate appears at 18 CFR 284.8(f)(1) and 284.9(f)(1) (1990). In Order No. 500–H, the Commission stated that if the DC Circuit Court of Appeals had not completed judicial review of the final rule by December 31, 1990, the Commission would further extend the December 31, 1990 deadline until 30 days after the date of issuance of the court's mandate upon completion of judicial review. The Court's mandate issued on November 13, 1990, and accordingly the crediting program terminated on December 31, 1990.

permitted an open access pipeline to refuse to transport a producer's gas unless that producer offered to credit the volumes to be transported against the pipeline's existing take-or-pay liability under any pre-June 23, 1987 contract with the producer. The purpose of the crediting requirement was to help offset the potential, discussed in *Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (DC Cir. 1987), for open access transportation to aggravate pipelines' take-or-pay problems. As the Commission explained in Order Nos. 500–H and 500–I, crediting did this primarily by giving pipelines additional bargaining power to negotiate with producers reasonable settlements of their take-or-pay contracts.

In Order Nos. 500–H and 500–I, the Commission also determined not to take action under NGA section 5 to modify producer-pipeline take-or-pay contracts. The Commission stated that, since it lacks authority to modify contracts for the sale of non-jurisdictional gas, section 5 action would not bring about, and could discourage, the complete restructuring of all pipeline-producer contracts necessary to resolve fully the pipeline's take-or-pay problems and complete the transition to a competitive wellhead market. The Commission therefore found that, assuming pipelines have the bargaining power to negotiate reasonable settlements that resolve their take-or-pay problems, settlements are a preferable solution to the take-or-pay problem. The Commission concluded that, since pipelines had already substantially resolved the bulk of their take-or-pay problems through individually negotiated settlements and since the provisions of the final rule, including the continuation of crediting, should enable pipelines to negotiate reasonable settlements of the remainder of their take-or-pay problems, the Commission would not take section 5 action.

In AGA II, the court affirmed in all but one respect the Commission's decisions concerning crediting, and the Commission's related rejection of requests that it take action under NGA Section 5 to modify take-or-pay contracts between producers and pipelines. The court upheld the Commission's reliance on individual settlement negotiations, under incentives structured by the crediting program, as the best way to resolve the pipelines' take-or-pay problems. In affirming the Commission's refusal to take section 5 action, the court held, "We have no basis whatever for forcing the Commission into interference with thousands of contracts, in the form either of generic rules or interminable case-by-case decisions, which in either event would be only dimly related to the price difficulty that is the core of the pipelines' problem and is plainly off the Commission's reservation." [4]

However, the court remanded the case to the Commission for further consideration of the so-called "double crediting" issue. Under the crediting mechanism, a pipeline could require a producer to offer credits for transporting gas which another pipeline had purchased from that producer. Some producers contended before the court that this amounted to providing "double credits," since the purchasing pipeline's purchase of the unit of gas would prevent it from incurring any take-or-pay liability for that gas, while the transporting pipeline's application of the credit would also reduce that pipeline's take-or-pay liability. The producers accordingly contended that the Commission had erred in permitting the transporting pipeline to seek a credit in the above-described situation. The court held that the Commission had not adequately addressed this contention and remanded the case to the Commission to address the producers' concerns head-on.

III. Discussion

A. "Double Crediting" Issue

After further consideration, the Commission continues to believe that its crediting regulations did not result in improper double crediting in the situation described by the producers. The producers postulate a situation in which a particular producer has take-or-pay contracts with two pipelines entered into before June 23, 1987. The first pipeline purchases gas under its take-or-pay contract, paying the producer the price provided in the contract. That purchase constitutes a take under the contract, and thus the purchasing pipeline does not incur take-or-pay liability for that gas. This allegedly constitutes the first credit. The purchasing pipeline (or some other shipper) then seeks to have the gas transported on the second pipeline. The second pipeline refuses to transport the gas, unless the producer provides the transporting pipeline a credit against its take-or-pay liability under its contract with the producer. The producer offers the credit. This allegedly constitutes the second credit. The producers contended that this alleged double crediting requirement unduly burdened them and should be eliminated by providing that the transporting pipeline would not be eligible for a credit in the above-described situation.

The primary difficulty with the producers' contention is that it requires treating the purchasing pipeline's actual purchase of a unit of gas under its take-or-pay contract as the giving of a credit. This, however, only make sense if the purchasing pipeline's purchase can be considered a detriment to the producer that is in addition to the detriment of the actual credit given to the transporting pipeline. It is difficult to see how the purchasing pipeline's purchase pursuant to the terms of its contract can be considered a detriment to the producer, since that purchase is precisely what the producer bargained for when it entered into the take-or-pay contract with the purchasing pipeline. The whole purpose of the take-or-pay clause was to ensure the producer a minimum level of income by requiring the pipeline either to purchase and pay for the gas or, if it did not purchase the gas, at least pay for it. That purpose has been accomplished by the purchasing pipeline's actual purchase of the gas, as required by the contract.

The producers apparently consider the purchase under the take-or-pay contract to be a detriment to the producer on the ground that the producer would have been better off to have the purchasing pipeline not actually take the gas, but instead incur an obligation to make the take-or-pay payment. In that event, the producer would have been owed the same payment from the pipeline, only in the form of a take-or-pay payment for gas not taken instead of in the form of a payment for gas taken. However, in addition, the producer would have retained the gas and could have resold it to another purchaser (or to the pipeline in a later year). However, the Commission does not believe that loss of the ability to receive both a take-or-pay payment for a unit of gas and income from selling the same unit of gas to another purchaser constitutes a detriment to the producer to justify creating an additional exception from the Commission's crediting requirement. Even assuming that the producer would have been better off if the purchasing pipeline had not purchased the gas, it nevertheless got what it bargained for under the contract—payment for the gas taken.[5]

[4] 912 F.2d at 1509.

[5] No producer ever filed a specific request for relief with the Commission, alleging that it in fact had been required to give "double credits" in the manner described above. Accordingly, it appears that the asserted "double crediting" problem may have been more theoretical than real.

In any event, if the producer truly preferred to obtain a take-or-pay payment from the purchasing pipeline instead of actually making a sale to that pipeline, it probably could have accomplished that by simply refusing to offer the transporting pipeline a credit. Nothing in the Commission's regulations required producers to offer credits. The offer of credits was purely voluntary. If the transporting pipeline refused to transport the gas as a result of the producer's failure to offer credits, the purchasing pipeline would have had to decide whether it really wanted to purchase the gas from the producer if it could not obtain the necessary transportation to make its intended resale of the gas.[6] If the purchasing pipeline chose not to purchase the gas after all, the pipeline would nevertheless owe the producer a take-or-pay payment in the same amount as the purchase price and the producer would be free to resell the gas to another purchaser. On the other hand, if the purchasing pipeline nevertheless proceeded to purchase the gas from the producer, the producer would not have to provide any credit to the transporting pipeline. In either event, the producer would not have had to provide so-called double credits, even under the producers' definition of that term. Thus, the producers had it entirely within their power to prevent the alleged double crediting situation from arising.

In Order No. 500–H the Commission observed, in support of allowing a pipeline to receive a credit for transporting gas that another pipeline had purchased under a take-or-pay contract, that the purchasing pipeline's sale to customers in the transporting pipeline's sales market could displace the transporting pipeline's own sales. The court expressed doubt that this observation supported the requirement that the producer offer the transporting pipeline a credit.[7] While the court agreed that the transporting pipeline might have a sale displaced, it noted that a particular unit of gas can be used only once and that one use would seem to state the aggregate amount of displacement. Regardless of the extent of sales displacement, the Commission believes that the producers' double crediting contention must fail simply because, as discussed above, they are not required to provide double credits in the situation which they describe.

In any event, as the court proceeded to state, "[t]he true displacement caused by sale of a fungible commodity is necessarily obscure (if not in fact an arbitrary concept)."[8] It is for that reason that the Commission never required a pipeline, as a condition for obtaining a credit, to show that its transportation of gas on behalf of another would actually displace its own sale. The Commission assumed that in some cases a pipeline would obtain credits for transporting gas which did not displace its sale; however, this would be offset in other cases where, because of an exception to crediting, the pipeline was required to transport gas without a credit, even though that gas nevertheless did displace the pipeline's sale.

As noted above, the purpose of crediting was to help offset the potential for open access transportation to aggravate pipelines' take-or-pay problems. One result of crediting was to give pipelines increased bargaining power to negotiate reasonable settlements of their take-or-pay problems with producers, without allowing pipelines unlimited use of their monopoly power over transportation by refusing to transport gas for which the producer had offered a take-or-pay credit. The Commission believes that the crediting regulations as adopted in Order Nos. 500–H and 500–I, including the requirement for credits in the situation here at issue, struck a reasonable balance between, on the one hand, the pipelines' need for sufficient bargaining power to negotiate reasonable settlements and, on the other hand, the need to prevent pipelines from abusing their monopoly power over transportation.

Finally, the court in AGA II expressed concern that allowing a transporting pipeline to obtain a credit for transporting gas which another pipeline had purchased might "provide rich opportunities for mutual back-scratching among pipelines—to arrange for transporting each other's gas for the purpose of generating credits." The court suggested that this could be a particular problem "because the producer has no say over which pipelines will transport the gas." The Commission does not believe that, as a practical matter, this proved to be a problem under the crediting program. At no time during the crediting program did the Commission receive any complaints from producers that pipelines were in fact arranging to transport one another's gas for the purpose of obtaining credits.

Furthermore, the producers did have control over purchasing pipelines' ability to transport the producers' gas on other pipelines. As discussed above, producers were free to refuse to offer a particular pipeline a credit. In that case, the transporting pipeline could either refuse to transport the gas or transport it without credits, but it could in no event obtain a credit from the producer. Thus, the producers had it entirely within their power to prevent a purchasing pipeline for having the gas transported over a second pipeline for a credit.

B. Deletion of Crediting Regulations

Pursuant to §§ 284.8(f)(1) and 284.9(f)(1) of the Commission's regulations, the crediting program terminated on December 31, 1990. As the Commission stated in Order No. 500–I,[9] this means not only that pipelines cannot seek credits for transportation performed after December 31, 1990, but also that they may not after December 31, 1990 apply against any take-or-pay liability previously unused credits generated by transportation performed before December 31, 1990. Since the Commission's crediting regulations, by their own terms, are no longer in effect, the Commission is, in this order, deleting those regulations (§§ 284.8(f) and 284.9(f) of Part 284) in their entirety.

C. Removal of Tariff Language Related to Crediting

A number of interstate pipelines have tariff provisions that provide for the implementation of the Commission's crediting rules. These tariff provisions not only require that offers of credits be provided to the pipeline, they also, in some cases, require that shippers provide pipelines the necessary information for the pipeline to determine its crediting rights. For example, the shipper may be required to inform the pipeline of the name of each producer that, on June 23, 1987, owned the leases from which the gas to be transported was produced. Since the crediting program terminated on December 31, 1990, all tariff provisions whose sole purpose is the implementation of the crediting program are now unnecessary. Accordingly, the Commission is requiring that all pipelines with such tariff provisions file, on or before October 15, 1991. To modify their tariffs

[6] This assumes that the purchasing pipeline would not actually purchase the gas from the producer until it has determined that it could obtain the necessary transportation to make its intended resale. If instead the pipeline went ahead and purchased the gas before determining if it could obtain the necessary transportation, then the producer could retain the sale while avoiding any subsequent credit simply by refusing to offer credits to the transporting pipeline.

[7] 912 F.2d at 1513.

[8] *Id.*

[9] III FERC ¶ 30,880 at 31,710.

so as to remove any tariff language whose sole purpose is the implementation of the crediting program. The pipelines may do this either as part of another rate filing or in a separate filing.

D. Dismissal of Proceedings Concerning Section 5 Action or the Commission's Crediting Regulations

Pipelines and others have filed various complaints and petitions for declaratory orders seeking to have the Commission exercise NGA section 5 authority to modify particular pipeline-producer contracts. As discussed above, the court in AGA II has affirmed the Commission's decision in Order Nos. 500–H and 500–I not to initiate action under NGA section 5 to modify producer-pipeline contracts, either in a generic rule or on a case-by-case basis. The court upheld the Commission's decision instead to rely on individually-negotiated settlements to resolve the take-or-pay problem. Accordingly, the Commission is, in this order, dismissing the various complaints and petitions for declaratory orders or rulemakings seeking section 5 action that are pending before it.

In addition, various requests for the Commission to interpret its crediting regulations were filed with the Commission before the issuance of Order Nos. 500–H and 500–I. The Commission believes that those requests were largely answered by Order Nos. 500–H and 500–I. Accordingly, this order also dismisses all pending requests for interpretation of the crediting regulations, without prejudice to any party refiling a request for interpretation to the extent that it continues to believe such an interpretation is necessary.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission certifies that promulgating this rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

V. Information Collection

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule. The Commission is notifying OMB of the information collection and recordkeeping requirements deleted by this rule as a result of the elimination of the Commission's crediting regulations.

VI. National Environmental Policy Act Statement

The Commission concludes that promulgating this rule does not represent a major Federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act. Consequently, neither an environmental impact statement nor an environmental assessment are required.

VII. Effective Date

The amendment of the Commission's part 284 regulations to eliminate the crediting provisions does not alter the substantive rights or interests of any interested persons, since those provisions have already terminated by their own terms. Therefore, prior notice and comment under section 4 of the Administrative Procedure Act (APA) are unnecessary. Since the purpose of this final rule is to delete certain provisions of the Commission's regulations that are no longer pertinent, the Commission finds good cause to make this rule effective immediately upon issuance. This rule is therefore effective April 4, 1991.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural Gas, Reporting and recordkeeping requirements.

The Commission Orders

(A) All interstate pipelines must, within six months of the publication of this order in the **Federal Register**, file to modify their tariffs so as to remove any tariff language whose sole purpose is the implementation of the crediting program. The pipelines may do this either as part of another rate filing or in a separate rate filing.

(B) The above-captioned proceedings concerning complaints or petitions for declaratory orders or rulemaking seeking section 5 action to modify producer-pipeline take-or-pay contracts or interpretations of the Commission's crediting regulations are dismissed.

(C) The Commission amends part 284, title 18, Code of Federal Regulations, as set forth below.

Commissioner Trabandt dissented in part with a separate statement to be issued later.

By the Commission.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 15 U.S.C. 3301–3432; 43 U.S.C. 1331–1356; 42 U.S.C. 7101–7532; E.O. 12009, 3 CFR 1978 Comp., p. 142.

§§ 284.8 and 284.9 [Amended]

2. Sections 284.8(f) and 284.9(f) are removed.

[FR Doc. 91–8629 Filed 4–11–91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8343]

RIN 1545-AN38

Like-Kind Exchanges; Additional Rules for Exchanges of Personal Property and for Exchanges of Multiple Properties

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to exchanges of personal property and multiple properties under section 1031 of the Internal Revenue Code. The regulations affect persons who exchange personal property or multiple properties. The regulations are necessary to provide persons who exchange these properties with the guidance necessary to comply with the law.

EFFECTIVE DATE: The final regulations are effective for exchanges occurring on or after April 11, 1991.

FOR FURTHER INFORMATION CONTACT: Debra L. Fischer, 202–377–9581 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1990, the **Federal Register** published a Notice of Proposed Rulemaking (55 FR 17635) under section 1031 of the Internal Revenue Code of 1986, relating to exchanges of personal property and multiple properties. Those

regulations proposed to amend §§ 1.1031(a)–1 and 1.1031(b)–1(c) of the Income Tax Regulations and to add new §§ 1.1031(a)–2 and 1.1031(f)–1.

After issuance of the proposed regulations, the Internal Revenue Service received public comments on the proposed regulations and held a public hearing on September 6, 1990. Six commentators spoke at the hearing. After fully considering the comments and the statements made at the hearing, the Service adopts the proposed regulations as revised by this Treasury decision. Descriptions of the revisions to the proposed regulations are included in the discussion of the public comments below. Proposed regulation § 1.1031(f)–1 has been renumbered § 1.1031(j)–1 in the final regulations.

Product Class Coding System

Under the proposed and final regulations, depreciable tangible personal property held for productive use in a business is exchanged for property of a "like kind" under section 1031 if the property is exchanged for property that is either of a like kind or of a like class. An exchange of properties of a like kind may qualify under section 1031 regardless of whether the properties are also of a like class. In determining whether exchanged properties are of a like kind, no inference is to be drawn from the fact that the properties are not of a like class.

Under the proposed regulations, depreciable tangible personal property held by the taxpayer for productive use in its business is of a like class to other depreciable tangible personal property to be held by the taxpayer for productive use in its business if the exchanged properties are within either the same "General Business Asset Class" or the same "Product Class." A General Business Asset Class consists of depreciable tangible personal property described in one of asset classes 00.11 through 00.28 and 00.4 of Rev. Proc. 87–56, 1987–2 C.B. 674. Under the final regulations, the term "General Business Asset Class" has been changed to "General Asset Class."

Under the proposed regulations, Product Classes consist of depreciable tangible personal property listed in a Product Code. A property's Product Code is its 5-digit product class under the product coding system of the U.S. Department of Commerce, Bureau of the Census, 1987 Census of Manufactures and Census of Mineral Industries, 1989 Reference Series: Numerical List of Manufactured and Mineral Products (Issued February 1989) (Numerical List).

Under the proposed regulations, in the case of depreciable tangible personal property that is not listed in a Product Code, or that is listed in a Product Code ending in a "9" (*i.e.*, a miscellaneous category), the determination of whether the exchanged properties are of a like class is made based on all the facts and circumstances.

Several commentators suggested that the regulations provide a different approach to determine whether property is of a like class. The two most commonly suggested approaches were (1) expanding the use of categories contained in Rev. Proc. 87–56, and (2) using the 4-digit product coding system of the Numerical List.

The final regulations adopt a 4-digit coding system for classifying depreciable tangible personal property. Specifically, the regulations adopt the 4-digit product coding system within Division D of the Standard Industrial Classification codes, set forth in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC Manual). Division D contains a listing of manufactured products and equipment. The SIC Manual provides the framework for the Numerical List.

Adoption of the 4-digit SIC Manual coding system approach improves the administrability and certainty of these regulations in several ways. As a practical matter, the SIC Manual is much more readily available (e.g., at many public libraries) than the alternative Numerical List. In addition, the SIC Manual is referenced by other federal regulations. With respect to section 1031 exchanges, use of the 4-digit SIC Manual coding system will likely result in fewer categories (and fewer exchange groups), thus simplifying the administration of this provision in transactions involving a number of items of depreciable tangible personal property. Furthermore, properties will more often be of a like class and thus fewer taxpayers will have to demonstrate that depreciable tangible personal properties exchanged are of a like kind. For example, under the 5-digit Numerical List, dairy equipment is in Product Code 35232 and haying machinery is in Product Code 35236. Thus, under the Numerical List these properties would not be of a like class. Under the 4-digit SIC Manual, however, dairy equipment and haying machinery are both within the same Product Class (SIC Code 3523), and are of a like class.

Under the final regulations, property that is listed in a 4-digit product class ending in a "9" (*i.e.*, a miscellaneous category) is not considered property within a Product Class. Accordingly, that property, and property that is not listed in a 4-digit product class, cannot be of a like class based on the 4-digit SIC Manual classification. Taxpayers may still demonstrate the these properties are of a like kind.

The final regulations provide that the Commissioner may, by guidance published in the Internal Revenue Bulletin, supplement the guidance provided in the final regulations relating to classification of properties. For example, the Commissioner may determine that two properties that are listed in separate product classes each ending in a "9" are of a like class, or that property that is not listed in any product class is of a like class to property that is listed in a product class.

Personal Property Held for Investment

The proposed regulations did not provide like classes for personal property that is held for investment rather than for productive use in a business. Under the proposed regulations, therefore, an exchange of personal property held for investment could qualify for nonrecognition under section 1031 only if the exchanged properties were of a like kind. Many commentators pointed out that certain types of depreciable tangible personnal property are held for investment. Examples of depreciable tangible personal property held for investment are the lamps, carpets and other furnishings in a building that is held for investment. The commentators stated that it would facilitate compliance with and administration of the regulations not to restrict taxpayers holding such property for investment to the less objective like-kind standard.

Upon further consideration, the Service has concluded that it is appropriate to extend the like-class provisions of the proposed regulations to depreciable tangible personal property held for investment, and the final regulations so provide. As under the proposed regulations, no like classes are provided for intangible personal property or for nondepreciable personal property. Exchanges of these types of properties qualify under section 1031 only if the properties are of a like kind. Nondepreciable personal property held for investment generally includes items considered to be collectibles, for example, works of art, antiques, gems, stamps, precious metals, coins, and historical objects.

Goodwill

Under the proposed regulations, neither the goodwill nor going concern value of dissimilar businesses is of a like kind. The proposed regulations also proposed treating goodwill or going concern value of similar businesses as being of a like kind only in rare and unusual circumstances.

After considering comments received on this issue, the Internal Revenue Service has concluded that the nature and character of goodwill and going concern value of a business are so inherently unique and inseparable from the business that goodwill or going concern value of one business can never be of a like kind to goodwill or going concern value of another business.

Accordingly, under the final regulations, goodwill or going concern value of a business activity are not of a like kind to goodwill or going concern value of another business activity.

Several commentators suggested that the rule would be inappropriate because section 1031(a)(2), which provides exceptions to property eligible for nonrecognition treatment under section 1031(a)(1), does not list goodwill or going concern value. The legislative history of section 1031(a)(2) demonstrates, however, that these exceptions were provided for reasons unrelated to whether the enumerated properties could be of a like kind to any other property. The fact that goodwill or going concern value is not listed in section 1031(a)(2) therefore does not establish that goodwill or going concern value can be of a like kind.

De minimis Exception

Several commentators suggested that the regulations provide an exception from the multiple property rules for items of personal property that have de minimis value. The suggestions generally were premised on the argument that the exception would eliminate small dollar exchange groups, thus simplifying the application of the regulations.

The commentators suggesting a section 1031 de minimis rule did not address the application of section 1245 to section 1031 exchanges. In cases in which a section 1031 de minimis rule typically would apply, section 1245 (a)(1) and (b)(4) would also apply. Section 1245(a)(1) generally requires the "recapture" of prior depreciation or amortization deductions as ordinary income. Although section 1245(b)(4) provides an exception from the recapture requirement for like-kind exchanges, this exception is limited; a taxpayer who transfers section 1245 property in a section 1031 exchange must recognize recapture gain to the extent of (i) any gain recognized on the exchange (determined without regard to section 1245) plus (ii) the fair market value of property acquired which is like-kind property under section 1031 but which is not section 1245 property. See § 1.1245–4(d). Thus, a de minimis rule under section 1031 generally would neither relieve taxpayers from gain recognition nor simplify the application of the regulations. Accordingly, the final regulations do not contain a de minimis exception.

Netting of Liabilities—Debt in Anticipation

Section 1.1031(b)–1(c) of the existing regulations provides that consideration received in the form of an assumption of a liability (or a transfer of property subject to a liability) is to be treated as "other property or money" for purposes of section 1031(b). Further, in determining the amount of "other property or money" for purposes of section 1031(b), consideration given in the form of an assumption of a liability (or a receipt of property subject to a liability) is offset against consideration received in the form of an assumption of a liability (or a transfer of property subject to a liability). Section 1.1031(d)–2, examples (1) and (2), provides additional rules.

The proposed regulations would have amended § 1.1031(b)–1(c) to clarify that, in determining the amount of "other property or money" for purposes of section 1031(b), consideration received by the taxpayer in the form of an assumption of a liability (or a transfer of property subject to a liability) may not be offset by consideration given by the taxpayer in the form of an assumption of a liability (or a receipt of property subject to a liability) with respect to a liability incurred by the taxpayer in anticipation of an exchange under section 1031.

Commentators demonstrated that the proposed rule could create substantial uncertainty in the tax results of exchange transactions involving liabilities on both relinquished and replacement properties. The final regulations do not include this proposed amendment.

Other Liabilities Issues

Under the proposed regulations, all liabilities of which the taxpayer is relieved are offset against all liabilities assumed by the taxpayer in the exchange, regardless of whether the liabilities are recourse or nonrecourse and regardless of whether the liabilities are secured by or otherwise relate to specific property transferred or received as part of the exchange. If the taxpayer assumes excess liabilities as part of the exchange (*i.e.*, the amount of liabilities the taxpayer assumes exceeds the amount of the liabilities of which the taxpayer is relieved), the excess is allocated to the properties received in all the exchange groups, based on their fair market values and to the extent of their fair market values.

Several commentators suggested that these proposed rules not be adopted. In general, those commentators suggested that excess liabilities be allocated instead to property, if any, securing the indebtedness. This rule could be manipulated, however, in any case in which the lender permitted substitution of, or additions to, loan security in contemplation of the exchange transaction. It would put a premium on sophisticated tax planning and would not improve the administrability of the regulations. The final regulations do not change either § 1.1031(d)–2 of the existing regulations or the proposed regulations on allocating excess liabilities.

Effective Date

The regulations contained in this Treasury decision are effective for exchanges occurring on or after April 11, 1991. For exchanges occurring prior to April 11, 1991, the Internal Revenue Service will take into account whether the properties exchanged would be of a like class under these regulations in determining whether those properties are of a like kind.

Special Analyses

It has been determined that these final rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 because the regulations proposed in that notice and adopted by this Treasury decision are interpretative. Therefore, a final Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). In accordance with section 7805(f) of the Internal Revenue Code, the Proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these final regulations are Debra L. Fischer and

Arthur E. Davis III of the Office of Assistant Chief Counsel, Income Tax & Accounting. However, personnel from other offices of the Treasury Department and from the Internal Revenue Service participated in developing the regulations on matters of both substance and style.

List of Subjects 26 CFR 1.1001–1 through 1.1102–3

Banks, Banking, Holding companies, Income taxes, Radio, Reporting and Recordkeeping requirements.

Adoption of Amendments to the Regulations

For the reasons set forth in the preamble, title 26, chapter I of the Code of Federal Regulations is amended as set forth below:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1031(a)-1 is amended by adding a new sentence at the end of paragraph (b) to read as follows:

§ 1.1031(a)–(1) Property held for productive use in trade or business or for investment.

* * * * *

(b) * * * For additional rules for exchanges of personal property, see § 1.1031 (a)–2.

* * * * *

Par. 3. Section 1.1031 (a)-2 is added to read as follows:

§ 1.1031(a)-2 Additional rules for exchanges of personal property.

(a) *Introduction.* Section 1.1031(a)–1(b) provides that the nonrecognition rules of section 1031 do not apply to an exchange of one kind or class of property for property of a different kind or class. This section contains additional rules for determining whether personal property has been exchanged for property of a like kind or like class. Personal properties of a like class are considered to be of a "like kind" for purposes of section 1031. In addition, an exchange of properties of a like kind may qualify under section 1031 regardless of whether the properties are also of a like class. In determining whether exchanged properties are of a like kind, no inference is to be drawn from the fact that the properties are not of a like class. Under paragraph (b) of this section, depreciable tangible personal properties are of a like class if they are either within the same General Asset Class (as defined in paragraph (b)(2) of this section) or within the same Product Class (as defined in paragraph (b)(3) of this section). Paragraph (c) of this section provides rules for exchanges of intangible personal property and nondepreciable personal property.

(b) *Depreciable tangible personal property*—(1) *General rule.* Depreciable tangible personal property is exchanged for property of a "like kind" under section 1031 if the property is exchanged for property of a like kind or like class. Depreciable tangible personal property is of a like class to other depreciable tangible personal property if the exchanged properties are either within the same General Asset Class or within the same Product Class. A single property may not be classified within more than one General Asset Class or within more than one Product Class. In addition, property classified within any General Asset Class may not be classified within a Product Class. A property's General Asset Class or Product Class is determined as of the date of the exchange.

(2) *General Asset Classes.* Except as provided in paragraphs (b)(4) and (b)(5) of this section, property within a General Asset Class consists of depreciable tangible personal property described in one of asset classes 00.11 through 00.28 and 00.4 of Rev. Proc. 87–56, 1987–2 C.B. 674. These General Asset Classes describe types of depreciable tangible personal property that frequently are used in many businesses. The General Asset Classes are as follows:

(i) Office furniture, fixtures, and equipment (asset class 00.11),

(ii) Information systems (computers and peripheral equipment) (asset class 00.12),

(iii) Data handling equipment, except computers (asset class 00.13),

(iv) Airplanes (airframes and engines), except those used in commercial or contract carrying of passengers or freight, and all helicopters (airframes and engines) (asset class 00.21),

(v) Automobiles, taxis (asset class 00.22),

(vi) Buses (asset class 00.23),

(vii) Light general purpose trucks (asset class 00.241),

(viii) Heavy general purpose trucks (asset class 00.242),

(ix) Railroad cars and locomotives, except those owned by railroad transportation companies (asset class 00.25),

(x) Tractor units for use over-the-road (asset class 00.26),

(xi) Trailers and trailer-mounted containers (asset class 00.27),

(xii) Vessels, barges, tugs, and similar water-transportation equipment, except those used in marine construction (asset class 00.28), and

(xiii) Industrial steam and electric generation and/or distribution systems (asset class 00.4).

(3) *Product Classes.* Except as provided in paragraphs (b)(4) and (b)(5) of this section, property within a Product Class consists of depreciable tangible personal property that is listed in a 4-digit product class within Division D of the Standard Industrial Classification codes, set forth in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC Manual). Copies of the SIC Manual may be obtained from the National Technical Information Service, an agency of the U.S. Department of Commerce. Division D of the SIC Manual contains a listing of manufactured products and equipment. For this purpose, any 4-digit product class ending in a "9" (*i.e.*, a miscellaneous category) will not be considered a Product Class. If a property is listed in more than one product class, the property is treated as listed in any one of those product classes. A property's 4-digit product classification is referred to as the property's "SIC Code."

(4) *Modifications of Rev. Proc. 87–56 and SIC Manual.* The asset classes of Rev. Proc. 87–56 and the product classes of the SIC Manual may be updated or otherwise modified from time to time. In the event Rev. Proc. 87–56 is modified, the General Asset Classes will follow the modification, and the modification will be effective for exchanges occurring on or after the date the modification is published in the Internal Revenue Bulletin, unless otherwise provided. Similarly, in the event the SIC Manual is modified, the Product Classes will follow the modification, and the modification will be effective for exchanges occurring on or after the effective date of the modification. However, taxpayers may rely on the unmodified SIC Manual for exchanges occurring during the one-year period following the effective date of the modification. The SIC Manual generally is modified every five years, in years ending in a 2 or 7 (e.g., 1987 and 1992). The effective date of the modified SIC Manual is announced in the **Federal Register** and generally is January 1 of the year the SIC Manual is modified.

(5) *Modified classification through published guidance.* The Commissioner may, by guidance published in the Internal Revenue Bulletin, supplement the guidance provided in this section relating to classification of properties. For example, the Commissioner may

determine not to follow, in whole or in part, any modification of Rev. Proc. 87–56 or the SIC Manual. The Commissioner may also determine that two types of property that are listed in separate product classes each ending in a "9" are of a like class, or that a type of property that has a SIC Code is of a like class to a type of property that does not have a SIC Code.

(6) *No inference outside of Section 1031.* The rules provided in this section concerning the use of Rev. Proc. 87–56 and the SIC Manual are limited to exchanges under section 1031. No inference is intended with respect to the classification of property for other purposes, such as depreciation.

(7) *Examples.* The application of this paragraph (b) may be illustrated by the following examples:

Example 1. Taxpayer A transfers a personal computer (asset class 00.12) to B in exchange for a printer (asset class 00.12). With respect to A, the properties exchanged are within the same General Asset Class and therefore are of a like class.

Example 2. Taxpayer C transfers an airplane (asset class 00.21) to D in exchange for a heavy general purpose truck (asset class 00.242). The properties exchanged are not of a like class because they are within different General Asset Classes. Because each of the properties is within a General Asset Class, the properties may not be classified within a Product Class. The airplane and heavy general purpose truck are also not of a like kind. Therefore, the exchange does not qualify for nonrecognition of gain or loss under section 1031.

Example 3. Taxpayer E transfers a grader to F in exchange for a scraper. Neither property is within any of the General Asset Classes, and both properties are within the same Product Class (SIC Code 3533). With respect to E, therefore, the properties exchanged are of a like class.

Example 4. Taxpayer G transfers a personal computer (asset class 00.12), an airplane (asset class 00.21) and a sanding machine (SIC Code 3553), to H in exchange for a printer (asset class 00.12), a heavy general purpose truck (asset class 00.242) and a lathe (SIC Code 3553). The personal computer and the printer are of a like class because they are within the same General Asset Class; the sanding machine and the lathe are of a like class because neither property is within any of the General Asset Classes and they are within the same Product Class. The airplane and the heavy general purpose truck are neither within the same General Asset Class nor within the same Product Class, and are not of a like kind.

(c) *Intangible personal property and nondepreciable personal property*—(1) *General rule.* An exchange of intangible personal property of nondepreciable personal property qualifies for nonrecognition of gain or loss under section 1031 only if the exchanged properties are of a like kind. No like classes are provided for these properties. Whether intangible personal property is of a like kind to other intangible personal property generally depends on the nature or character of the rights involved (*e.g.*, a patent or a copyright) and also on the nature or character of the underlying property to which the intangible personal property relates.

(2) *Goodwill and going concern value.* The goodwill or going concern value of a business is not of a like kind to the goodwill or going concern value of another business.

(3) *Examples.* The application of this paragraph (c) may be illustrated by the following examples:

Example (1). Taxpayer K exchanges a copyright on a novel for a copyright on a different novel. The properties exchanged are of a like kind.

Example (2). Taxpayer J exchanges a copyright on a novel for a copyright on a song. The properties exchanged are not of a like kind.

(d) *Effective date.* Section 1.1031(a)–2 is effective for exchanges occurring on or after April 11, 1991.

Par. 4. Section 1.1031(j)–1 is added to read as follows:

§ 1.1031(j)–1 Exchanges of multiple properties.

(a) *Introduction*—(1) *Overview.* As a general rule, the application of section 1031 requires a property-by-property comparison for computing the gain recognized and basis of property received in a like-kind exchange. This section provides an exception to this general rule in the case of an exchange of multiple properties. An exchange is an exchange of multiple properties if, under paragraph (b)(2) of this section, more than one exchange group is created. In addition, an exchange is an exchange of multiple properties if only one exchange group is created but there is more than one property being transferred or received within that exchange group. Paragraph (b) of this section provides rules for computing the amount of gain recognized in an exchange of multiple properties qualifying for nonrecognition of gain or loss under section 1031. Paragraph (c) of this section provides rules for computing the basis of properties received in an exchange of multiple properties qualifying for nonrecognition of gain or loss under section 1031.

(2) *General Approach.* (i) In general, the amount of gain recognized in an exchange of multiple properties is computed by first separating the properties transferred and the properties received by the taxpayer in the exchange into exchange groups in the manner described in paragraph (b)(2) of this section. The separation of the properties transferred and the properties received in the exchange into exchange groups involves matching up properties of a like kind of like class to the extent possible. Next, all liabilities assumed by the taxpayer as part of the transaction are offset by all liabilities of which the taxpayer is relieved as part of the transaction, with the excess liabilities assumed or relieved allocated in accordance with paragraph (b)(2)(ii) of this section. Then, the rules of section 1031 and the regulations thereunder are applied separately to each exchange group to determine the amount of gain recognized in the exchange. See §§ 1.1031(b)–1 and 1.1031(c)–1. Finally, the rules of section 1031 and the regulations thereunder are applied separately to each exchange group to determine the basis of the properties received in the exchange. See §§ 1.1031(d)–1 and 1.1031(d)–2.

(ii) For purposes of this section, the exchanges are assumed to be made at arms' length, so that the aggregate fair market value of the property received in the exchange equals the aggregate fair market value of the property transferred. Thus, the amount realized with respect to the properties transferred in each exchange group is assumed to equal their aggregate fair market value.

(b) *Computation of gain recognized*—(1) *In general.* In computing the amount of gain recognized in an exchange of multiple properties, the fair market value must be determined for each property transferred and for each property received by the taxpayer in the exchange. In addition, the adjusted basis must be determined for each property transferred by the taxpayer in the exchange.

(2) *Exchange groups and residual group.* The properties transferred and the properties received by the taxpayer in the exchange are separated into exchange groups and a residual group to the extent provided in this paragraph (b)(2).

(i) *Exchange groups.* Each exchange group consists of the properties transferred and received in the exchange, all of which are of a like kind or like class. If a property could be included in more than one exchange group, the taxpayer may include the property in any of those exchange groups. Property eligible for inclusion within an exchange group does not include money or property described in section 1031(a)(2) (*i.e.*, stock in trade or other property held primarily for sale, stocks, bonds, notes, other securities or evidences of indebtedness or interest.

interests in a partnership, certificates of trust or beneficial interests, or choses in action). For example, an exchange group may consist of all exchanged properties that are within the same General Asset Class or within the same Product Class (as defined in § 1.1031(a)–2(b)). Each exchange group must consist of at least one property transferred and at least one property received in the exchange.

(ii) *Treatment of liabilities.* (A) All liabilities assumed by the taxpayer as part of the exchange are offset against all liabilities of which the taxpayer is relieved as part of the exchange, regardless of whether the liabilities are recourse or nonrecourse and regardless of whether the liabilities are secured by or otherwise relate to specific property transferred or received as part of the exchange. See §§ 1.1031 (b)–1(c) and 1.1031(d)–2. For purposes of this section, liabilities assumed by the taxpayer as part of the exchange consist of liabilities of the other party to the exchange assumed by the taxpayer and liabilities subject to which the other party's property is transferred in the exchange. Similarly, liabilities of which the taxpayer is relieved as part of the exchange consist of liabilities of the taxpayer assumed by the other party to the exchange and liabilities subject to which the taxpayer's property is transferred.

(B) If there are excess liabilities assumed by the taxpayer as part of the exchange (*i.e.*, the amount of liabilities assumed by the taxpayer exceeds the amount of liabilities of which the taxpayer is relieved), the excess is allocated among the exchange groups (but not to the residual group) in proportion to the aggregate fair market value of the properties received by the taxpayer in the exchange groups. The amount of excess liabilities assumed by the taxpayer that are allocated to each exchange group may not exceed the aggregate fair market value of the properties received in the exchange group.

(C) If there are excess liabilities of which the taxpayer is relieved as part of the exchange (*i.e.*, the amount of liabilities of which the taxpayer is relieved exceeds the amount of liabilities assumed by the taxpayer), the excess is treated as a Class I asset for purposes of making allocations to the residual group under paragraph (b)(2)(iii) of this section.

(D) Paragraphs (b)(2)(ii) (A), (B), and (C) of this section are applied in the same manner even if section 1031 and this section apply to only a portion of a larger transaction (such as a transaction described in section 1060(c) and § 1.1060–1T(b)). In that event, the amount of excess liabilities assumed by the taxpayer or the amount of excess liabilities of which the taxpayer is relieved is determined based on all liabilities assumed by the taxpayer and all liabilities of which the taxpayer is relieve as part of the larger transaction.

(iii) *Residual group.* If the aggregate fair market value of the properties transferred in all of the exchange groups differs from the aggregate fair market value of the properties received in all of the exchange groups (taking liabilities into account in the manner described in paragraph (b)(2)(ii) of this section), a residual group is created. The residual group consists of an amount of money or other property having an aggregate fair market value equal to that difference. The residual group consists of either money or other property transferred in the exchange or money or other property received in the exchange, but not both. For this purpose, other property includes property described in section 1031(a)(2) (*i.e.*, stock in trade or other property held primarily for sale, stocks, bonds, notes, other securities or evidences of indebtedness or interest, interests in a partnership, certificates of trust or beneficial interests, or choses in action), property transferred that is not of a like kind or like class with any property received, and property received that is not of a like kind or like class with any property transferred. The money and properties that are allocated to the residual group are considered to come from the following assets in the following order: first from Class I assets, then from Class II assets, then from Class III assets, and then from Class IV assets. The terms Class I assets, Class II assets, Class III assets, and Class IV assets have the same meanings as in § 1.1060–1T(d). Within each Class, taxpayers may choose which properties are allocated to the residual group.

(iv) *Exchange group surplus and deficiency.* For each of the exchange groups described in this section, an "exchange group surplus" or "exchange group deficiency," if any, must be determined. An exchange group surplus is the excess of the aggregate fair market value of the properties received (less the amount of any excess liabilities assumed by the taxpayer that are allocated to that exchange group), in an exchange group over the aggregate fair market value of the properties transferred in that exchange group. An exchange group deficiency is the excess of the aggregate fair market value of the properties transferred in an exchange group over the aggregate fair market value of the properties received (less the amount of any excess liabilities assumed by the taxpayer that are allocated to that exchange group) in that exchange group.

(3) *Amount of gain recognized.*—(i) For purposes of this section, the amount of gain or loss realized with respect to each exchange group and the residual group is the difference between the aggregate fair market value of the properties transferred in that exchange group or residual group and the properties' aggregate adjusted basis. The gain realized with respect to each exchange group is recognized to the extent of the lesser of the gain realized and the amount of the exchange group deficiency, if any. Losses realized with respect to an exchange group are not recognized. See section 1031 (a) and (c). The total amount of gain recognized under section 1031 in the exchange is the sum of the amount of gain recognized with respect to each exchange group. With respect to the residual group, the gain or loss realized (as determined under this section) is recognized as provided in section 1001 or other applicable provision of the Code.

(ii) The amount of gain or loss realized and recognized with respect to properties transferred by the taxpayer that are not within any exchange group or the residual group is determined under section 1001 and other applicable provisions of the Code, with proper adjustments made for all liabilities not allocated to the exchange groups or the residual group.

(c) *Computation of basis of properties received.* In an exchange of multiple properties qualifying for nonrecognition of gain or loss under section 1031 and this section, the aggregate basis of properties received in each of the exchange groups is the aggregate adjusted basis of the properties transferred by the taxpayer within that exchange group, increased by the amount of gain recognized by the taxpayer with respect to that exchange group, increased by the amount of the exchange group surplus or decreased by the amount of the exchange group deficiency, and increased by the amount, if any, of excess liabilities assumed by the taxpayer that are allocated to that exchange group. The resulting aggregate basis of each exchange group is allocated proportionately to each property received in the exchange group in accordance with its fair market value. The basis of each property received within the residual group (other than money) is equal to its fair market value.

(d) *Examples.* The application of this section may be illustrated by the following examples

Example 1. (i) K exchanges computer A (asset class 00.12) and automobile A (asset class 00.22), both of which were held by K for productive use in its business, with W for printer B (asset class 00.12) and automobile B (asset class 00.22), both of which will be held by K for productive use in its business. K's adjusted basis and the fair market value of the exchanged properties are as follows:

	Adjusted basis	Fair market value
Computer A	$375	$1,000
Automobile A	1,500	4,000
Printer B		2,050
Automobile B		2,950

(ii) Under paragraph (b)(2) of this section, the properties exchanged are separated into exchange groups as follows:

(A) The first exchange group consists of computer A and printer B (both are within the same General Asset Class) and, as to K, has an exchange group surplus of $1050 because the fair market value of printer B ($2050) exceeds the fair market value of computer A ($1000) by that amount.

(B) The second exchange group consists of automobile A and automobile B (both are within the same General Asset Class) and, as to K, has an exchange group deficiency of $1050 because the fair market value of automobile A ($4000) exceeds the fair market value of automobile B ($2950) by that amount.

(iii) K recognizes gain on the exchange as follows:

(A) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer A ($1000) over its adjusted basis ($375), or $625. The amount of gain recognized is the lesser of the gain realized ($625) and the exchange group deficiency ($0), or $0.

(B) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile A ($4000) over its adjusted basis ($1500), or $2500. The amount of gain recognized is the lesser of the gain realized ($2500) and the exchange group deficiency ($1050), or $1050.

(iv) The total amount of gain recognized by K in the exchange is the sum of the gains recognized with respect to both exchange groups ($0 + $1050), or $1050.

(v) The bases of the property received by K in the exchange, printer B and automobile B, are determined in the following manner:

(A) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within the exchange group ($375), increased by the amount of gain recognized with respect to that exchange group ($0), increased by the amount of the exchange group surplus ($1050), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $1425. Because printer B was the only property received within the first exchange group, the entire basis of $1425 is allocated to printer B.

(B) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group ($1500), increased by the amount of gain recognized with respect to that exchange group ($1050), decreased by the amount of the exchange group deficiency ($1050), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $1500. Because automobile B was the only property received within the second exchange group, the entire basis of $1500 is allocated to automobile B.

Example 2. (i) F exchanges computer A (asset class 00.12) and automobile A (asset class 00.22), both of which were held by F for productive use in its business, with G for printer B (asset class 00.12) and automobile B (asset class 00.22), both of which will be held by F for productive use in its business, and corporate stock and $500 cash. The adjusted basis and fair market value of the properties are as follows:

	Adjusted basis	Fair market value
Computer A	$375	$1,000
Automobile A	3,500	4,000
Printer B		800
Automobile B		2,950
Corporate stock		750
Cash		500

(ii) Under paragraph (b)(2) of this section, the properties exchanged are separated into exchange groups as follows:

(A) The first exchange group consists of computer A and printer B (both are within the same General Asset Class) and, as to F, has an exchange group deficiency of $200 because the fair market value of computer A ($1000) exceeds the fair market value of printer B ($800) by that amount.

(B) The second exchange group consists of automobile A and automobile B (both are within the same General Asset Class) and, as to F, has an exchange group deficiency of $1050 because the fair market value of automobile A ($4000) exceeds the fair market value of automobile B ($2950) by that amount.

(C) Because the aggregate fair market value of the properties transferred by F in the exchange groups ($5,000) exceeds the aggregate fair market value of the properties received by F in the exchange groups ($3750) by $1250, there is a residual group in that amount consisting of the $500 cash and the $750 worth of corporate stock.

(iii) F recognizes gain on the exchange as follows:

(A) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer A ($1000) over its adjusted basis ($375), or $625. The amount of gain recognized is the lesser of the gain realized ($625) and the exchange group deficiency ($200), or $200.

(B) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile A ($4000) over its adjusted basis ($3500), or $500. The amount of gain recognized is the lesser of the gain realized ($500) and the exchange group deficiency ($1050), or $500.

(C) No property transferred by F was allocated to the residual group. Therefore, F does not recognize gain or loss with respect to the residual group.

(iv) The total amount of gain recognized by F in the exchange is the sum of the gains recognized with respect to both exchange groups ($200 + $500), or $700.

(v) The bases of the properties received by F in the exchange (printer B, automobile B, and the corporate stock) are determined in the following manner:

(A) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within that exchange group ($375), increased by the amount of gain recognized with respect to that exchange group ($200), decreased by the amount of the exchange group deficiency ($200), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $375. Because printer B was the only property received within the first exchange group, the entire basis of $375 is allocated to printer B.

(B) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group ($3500), increased by the amount of gain recognized with respect to that exchange group ($500), decreased by the amount of the exchange group deficiency ($1050), and increased by the amount of excess liabilites assumed allocated to that exchange group ($0), or $2950. Because automobile B was the only property received within the second exchange group, the entire basis of $2950 is allocated to automobile B.

(C) The basis of the property received within the residual group (the corporate stock) is equal to its fair market value or $750. Cash of $500 is also received within the residual group.

Example 3. (i) J and H enter into an exchange of the following properties. All of the property (except for the inventory) transferred by J was held for productive use in J's business. All of the property received by J will be held by J for productive use in its business.

J Transfers:			*H Transfers:*	
Property	Adjusted basis	Fair market value	Property	Fair market value
Computer A	$1,500	$5,000	Computer Z	$4,500
Computer B	500	3,000	Printer Y	2,500
Printer C	2,000	1,500	Real Estate X	1,000
Real Estate D	1,200	2,000	Real Estate W	4,000

J Transfers:			H Transfers:	
Property	Adjusted basis	Fair market value	Property	Fair market value
Real Estate E	0	1,800	Grader V	2,000
Scraper F	3,300	2,500	Truck T	1,700
Inventory	1,000	1,700	Cash	1,800
Total	9,500	17,500		17,500

(ii) Under paragraph (b)(2) of this section, the properties exchanged are separated into exchange groups as follows:

(A) The first exchange group consists of computer A, computer B, printer C, computer Z, and printer Y (all are within the same General Asset Class) and, as to J, has an exchange group deficiency of $2500 (($5000 + $3000 + $1500) − ($4500 + $2500)).

(B) The second exchange group consists of real estate D, E, X and W (all are of a like kind) and, as to J, has an exchange group surplus of $1200 (($1000 + $4000) − ($2000 + $1800)).

(C) The third exchange group consists of scraper F and grader V (both are within the same Product Class (SIC Code 3531)) and, as to J, has an exchange group deficiency of $500 ($2500 − $2000).

(D) Because the aggregate fair market value of the properties transferred by J in the exchange groups ($15,800) exceeds the aggregate fair market value of the properties received by J in the exchange groups ($14,000) by $1800, there is a residual group in that amount consisting of the $1800 cash (a Class I asset).

(E) The transaction also includes a taxable exchange of inventory (which is property described in section 1031 (a)[2]) for truck T (which is not of a like kind or like class to any property transferred in the exchange).

(iii) J recognizes gain on the transaction as follows:

(A) With respect to the first exchange group, the amount of gain realized is the excess of the aggregate fair market value of the properties transferred in the exchange group ($9500) over the aggregate adjusted basis ($4000), or $5500. The amount of gain recognized is the lesser of the gain realized ($5500) and the exchange group deficiency ($2500), or $2500.

(B) With respect to the second exchange group, the amount of gain realized is the excess of the aggregate fair market value of the properties transferred in the exchange group ($3800) over the aggregate adjusted basis ($1200), or $2600. The amount of gain recognized is the lesser of the gain realized ($2600) and the exchange group deficiency ($0), or $0.

(C) With respect to the third exchange group, a loss is realized in the amount of $800 because the fair market value of the property transferred in the exchange group ($2500) is less than its adjusted basis ($3300). Although a loss of $800 was realized, under section 1031 (a) and (c) losses are not recognized.

(D) No property transferred by J was allocated to the residual group. Therefore, J does not recognize gain or loss with respect to the residual group.

(E) With respect to the taxable exchange of inventory for truck T, gain of $700 is realized and recognized by J (amount realized of $1700 (the fair market value of truck T) less the adjusted basis of the inventory ($1000)).

(iv) The total amount of gain recognized by J in the transaction is the sum of the gains recognized under section 1031 with respect to each exchange group ($2500 + $0 + $0) and any gain recognized outside of section 1031 ($700), or $3200.

(v) The bases of the property received by J in the exchange are determined in the following manner:

(A) The aggregate basis of the properties received in the first exchange group is the adjusted basis of the properties transferred within that exchange group ($4000), increased by the amount of gain recognized with respect to that exchange group ($2500), decreased by the amount of the exchange group deficiency ($2500), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $4000. This $4000 of basis is allocated proportionately among the assets received within the first exchange group in accordance with their fair market values: Computer Z's basis is $2571 ($4000 × $4500/$7000); printer Y's basis is $1429 ($4000 × $2500/$7000).

(B) The aggregate basis of the properties received in the second exchange group is the adjusted basis of the properties transferred within that exchange group ($1200), increased by the amount of gain recognized with respect to that exchange group ($0), increased by the amount of the exchange group surplus ($1200), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $2400. This $2400 of basis is allocated proportionately among the assets received within the second exchange group in accordance with their fair market values: Real estate X's basis is $480 ($2400 × $1000/$5000); real estate W's basis is $1920 ($2400 × $4000/$5000).

(c) The basis of the property received in the third exchange group is the adjusted basis of the property transferred within that exchange group ($3300), increased by the amount of gain recognized with respect to that exchange group ($0), decreased by the amount of the exchange group deficiency ($500), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $2800. Because grader V was the only property received within the third exchange group, the entire basis of $2800 is allocated to grader V.

(D) Cash of $1800 is received within the residual group.

(E) The basis of the property received in the taxable exchange (truck T) is equal to its cost of $1700.

Example 4. (i) B exchanges computer A (asset class 00.12), automobile A (asset class 00.22) and truck A (asset class 00.241), with C for computer R (asset class 00.12), automobile R (asset class 00.22), truck R (asset class 00.241) and $400 cash. All properties transferred by either B or C were held for productive use in the respective transferor's business. Similarly, all properties to be received by either B or C will be held for productive use in the respective recipient's business. Automobile A, automobile R and truck R are each secured by a nonrecourse liability and are transferred subject to such liability. The adjusted basis, fair market value, and liability secured by each property, if any, are as follows:

	Adjusted basis	Fair market value	Liability
B transfers:			
Computer A	$800	$1,500	$0
Automobile A	900	2,500	500
Truck A	700	2,000	0
C transfers:			
Computer R	1,100	1,600	0
Automobile R	2,100	3,100	750
Truck R	600	1,400	250
Cash		400	

(ii) The tax treatment to B is as follows:

(A)(*1*) The first exchange group consists of computers A and R (both are within the same General Asset Class).

(*2*) The second exchange group consists of automobiles A and R (both are within the same General Asset Class).

(*3*) The third exchange group consists of trucks A and R (both are in the same General Asset Class).

(B) Under paragraph (b)(2)(ii) of this section, all liabilities assumed by B ($1000) are offset by all liabilities of which B is relieved ($500), resulting in excess liabilities assumed of $500. The excess liabilities assumed of $500 is allocated among the exchange groups in proportion to the fair market value of the properties received by B in the exchange groups as follows:

(*1*) $131 of excess liabilities assumed ($500 × $1600/$6100) is allocated to the first exchange group. The first exchange group has an exchange group deficiency of $31 because the fair market value of computer A ($1500) exceeds the fair market value of computer R less the excess liabilities assumed allocated to the exchange group ($1600–$131) by that amount.

(*2*) $254 of excess liabilities assumed ($500 × $3100/$6100) is allocated to the second exchange group. The second exchange group has an exchange group surplus of $346 because the fair market value of automobile

R less the excess liabilities assumed allocated to the exchange group ($3100–$254) exceeds the fair market value of automobile A ($2500) by that amount.

(3) $115 of excess liabilities assumed ($500 × $1400/$6100) is allocated to the third exchange group. The third exchange group has an exchange group deficiency of $715 because the fair market value of truck A ($2000) exceeds the fair market value of truck R less the excess liabilities assumed allocated to the exchange group ($1400–$115) by that amount.

(4) The difference between the aggregate fair market value of the properties transferred in all of the exchange groups, $6000, and the aggregate fair market value of the properties received in all of the exchange groups (taking excess liabilities assumed into account), $5600, is $400. Therefore there is a residual group in that amount consisting of $400 cash received.

(C) B recognizes gain on the exchange as follows:

(1) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer A ($1500) over its adjusted basis ($800), or $700. The amount of gain recognized is the lesser of the gain realized ($700) and the exchange group deficiency ($31), or $31.

(2) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile A ($2500) over its adjusted basis ($900), or $1600.

The amount of gain recognized is the lesser of the gain realized ($1600) and the exchange group deficiency ($0), or $0.

(3) With respect to the third exchange group, the amount of gain realized is the excess of the fair market value of truck A ($2000) over its adjusted basis ($700), or $1300. The amount of gain recognized is the lesser of gain realized ($1300) and the exchange group deficiency ($715), or $715.

(4) No property transferred by B was allocated to the residual group. Therefore, B does not recognize gain or loss with respect to the residual group.

(D) The total amount of gain recognized by B in the exchange is the sum of the gains recognized under section 1031 with respect to each exchange group ($31 + $0 +$715), or $746.

(E) the bases of the property received by B in the exchange (computer R, automobile R, and truck R) are determined in the following manner:

(1) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within that exchange group ($800), increased by the amount of gain recognized with respect to that exchange group ($31), decreased by the amount of the exchange group deficiency ($31), and increased by the amount of excess liabilities assumed allocated to that exchange group ($131), or $931. Because computer R was the only property received within the first exchange group, the entire basis of $931 is allocated to computer R.

(2) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group ($900), increased by the amount of gain recognized with respect to that exchange group ($0), increased by the amount of the exchange group surplus ($346), and increased by the amount of excess liabilities assumed allocated to that exchange group ($254), or $1500. Because automobile R was the only property received within the second exchange group, the entire basis of $1500 is allocated to automobile R.

(3) The basis of the property received in the third exchange group is the adjusted basis of the property transferred within that exchange group ($700), increased by the amount of gain recognized with respect to that exchange group ($715), decreased by the amount of the exchange group deficiency ($715), and increased by the amount of excess liabilities assumed allocated to that exchange group ($115), or $815. Because truck R was the only property received within the third exchange group, the entire basis of $815 is allocated to truck R.

(F) Cash of $400 is also received by B.

(iii) The tax treatment to C is as follows:

(A) (1) The first exchange group consists of computers R and A (both are within the same General Asset Class).

(2) The second exchange group consists of automobiles R and A (both are within the same General Asset Class).

(3) The third exchange group consists of trucks R and A (both are in the same General Asset Class).

(B) Under paragraph (b)(2)(ii) of this section, all liabilities of which C is relieved ($1000) are offset by all liabilities assumed by C ($500), resulting in excess liabilities relieved of $500. This excess liabilities relieved is treated as cash received by C.

(1) The first exchange group has an exchange group deficiency of $100 because the fair market value of computer R ($1600) exceeds the fair market value of computer A ($1500) by that amount.

(2) The second exchange group has an exchange group deficiency of $600 because the fair market value of automobile R ($3100) exceeds the fair market value of automobile A ($2500) by that amount.

(3) The third exchange group has an exchange group surplus of $600 because the fair market value of truck A ($2000) exceeds the fair market value of truck R ($1400) by that amount.

(4) The difference between the aggregate fair market value of the properties transferred by C in all of the exchange groups, $6100, and the aggregate fair market value of the properties received by C in all of the exchange groups, $6000, is $100. Therefore, there is a residual group in that amount, consisting of excess liabilities relieved of $100, which is treated as cash received by C.

(5) The $400 cash paid by C and $400 of the excess liabilities relieved which is treated as cash received by C are not within the exchange groups of the residual group.

(C) C recognizes gain on the exchange as follows:

(1) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer R ($1600) over its adjusted basis ($1100), or $500. The amount of gain recognized is the lesser of the gain realized ($500) and the exchange group deficiency ($100), or $100.

(2) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile R ($3100) over its adjusted basis ($2100), or $1000. The amount of gain recognized is the lesser of the gain realized ($1000) and the exchange group deficiency ($600), or $600.

(3) With respect to the third exchange group, the amount of gain realized is the excess of the fair market value of truck R ($1400) over its adjusted basis ($600), or $800. The amount of gain recognized is the lesser of gain realized ($800) and the exchange group deficiency ($0), or $0.

(4) No property transferred by C was allocated to the residual group. Therefore, C does not recognize any gain with respect to the residual group.

(D) The total amount of gain recognized by C in the exchange is the sum of the gains recognized under section 1031 with respect to each exchange group ($100+$600+$0), or $700.

(E) The bases of the properties received by C in the exchange (computer A, automobile A, and truck A) are determined in the following manner:

(1) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within that exchange group ($1100), increased by the amount of gain recognized with respect to that exchange group ($100), decreased by the amount of the exchange group deficiency ($100), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $1100. Because computer A was the only property received within the first exchange group, the entire basis of $1100 is allocated to computer A.

(2) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group ($2100), increased by the amount of gain recognized with respect to that exchange group ($600), decreased by the amount of the exchange group deficiency ($600), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $2100. Because automobile A was the only property received within the second exchange group, the entire basis of $2100 is allocated to automobile A.

(3) The basis of the property received in the third exchange group is the adjusted basis of the property transferred within that exchange group ($600), increased by the amount of gain recognized with respect to that exchange group ($0), increased by the amount of the exchange group surplus ($600), and increased by the amount of excess liabilities assumed allocated to that exchange group ($0), or $1200. Because truck A was the only property received within the third exchange group, the entire basis of $1200 is allocated to truck A.

Example 5. (i) U exchanges real estate A, real estate B, and grader A (SIC Code 3531) with V for real estate R and railroad car R (General Asset Class 00.25). All properties transferred by either U or V were held for productive use in the respective transferor's business. Similarly, all properties to be received by either U or V will be held for productive use in the respective recipient's business. Real estate R is secured by a

recourse liability and is transferred subject to that liability. The adjusted basis, fair market value, and liability secured by each property, if any, are as follows:

	Adjusted basis	Fair market value	Liability
U Transfers:			
Real Estate A	$2000	$5000	
Real Estate B	8000	13,500	
Grader A	500	2000	
V Transfers:			
Real Estate R	$20,000	$26,500	$7000
Railroad car R	1200	1000	

(ii) The tax treatment to U is as follows:

(A) The exchange group consists of real estate A, real estate B, and real estate R.

(B) Under paragraph (b)(2)(ii) of this section, all liabilities assumed by U ($7000) are excess liabilities assumed. The excess liabilities assumed of $7000 is allocated to the exchange group.

(*1*) The exchange group has an exchange group surplus of $1000 because the fair market value of real estate R less the excess liabilities assumed allocated to the exchange group ($26,500–$7000) exceeds the aggregate fair market value of real estate A and B ($18,500) by that amount.

(*2*) The difference between the aggregate fair market value of the properties received in the exchange group (taking excess liabilities assumed into account), $19,500, and the aggregate fair market value of the properties transferred in the exchange group, $18,500, is $1000. Therefore, there is a residual group in that amount consisting of $1000 (or 50 percent of the fair market value) of grader A.

(*3*) The transaction also includes a taxable exchange of the 50 percent portion of grader A not allocated to the residual group (which is not of a like kind or like class to any property received by U in the exchange) for railroad car R (which is not of a like kind or like class to any property transferred by U in the exchange).

(C) U recognizes gain on the exchange as follows:

(*1*) With respect to the exchange group, the amount of the gain realized is the excess of the aggregate fair market value of real estate A and B ($18,500) over the aggregate adjusted basis ($10,000), or $8500. The amount of the gain recognized is the lesser of the gain realized ($8500) and the exchange group deficiency ($0), or $0.

(*2*) With respect to the residual group, the amount of gain realized and recognized is the excess of the fair market value of the 50 percent portion of grader A that is allocated to the residual group ($1000) over its adjusted basis ($250), or $750.

(*3*) With respect to the taxable exchange of the 50 percent portion of grader A not allocated to the residual group for railroad car R, gain of $750 is realized and recognized by U (amount realized of $1000 (the fair market value of railroad car R) less the adjusted basis of the 50 percent portion of grader A not allocated to the residual group ($250)).

(D) The total amount of gain recognized by U in the transaction is the sum of the gain recognized under section 1031 with respect to the exchange group ($0), any gain recognized with respect to the residual group ($750), and any gain recognized with respect to property transferred that is not in the exchange group or the residual group ($750), or $1500.

(E) The bases of the property received by U in the exchange (real estate R and railroad car R) are determined in the following manner:

(*1*) The basis of the property received in the exchange group is the aggregate adjusted basis of the property transferred within that exchange group ($10,000), increased by the amount of gain recognized with respect to that exchange group ($0), increased by the amount of the exchange group surplus ($1000), and increased by the amount of excess liabilities assumed allocated to that exchange group ($7000), or $18,000. Because real estate R is the only property received within the exchange group, the entire basis of $18,000 is allocated to real estate R.

(*2*) The basis of railroad car R is equal to its cost of $1000.

(iii) The tax treatment to V is as follows:

(A) The exchange group consists of real estate R, real estate A, and real estate B.

(B) Under paragraph (b)(2)(ii) of this section, the liabilities of which V is relieved ($7000) results in excess liabilities relieved of $7000 and is treated as cash received by V.

(*1*) The exchange group has an exchange group deficiency of $8000 because the fair market value of real estate R ($26,500) exceeds the aggregate fair market value of real estate A and B ($18,500) by that amount.

(*2*) The difference between the aggregate fair market value of the properties transferred by V in the exchange group, $26,500, and the aggregate fair market value of the properties received by V in the exchange group, $18,500, is $8000. Therefore, there is a residual group in that amount, consisting of the excess liabilities relieved of $7000, which is treated as cash received by V, and $1000 (or 50 percent of the fair market value) of grader A.

(*3*) The transaction also includes a taxable exchange of railroad car R (which is not of a like kind or like class to any property received by V in the exchange) for the 50 percent portion of grader A (which is not of a like kind or like class to any property transferred by V in the exchange) not allocated to the residual group.

(C) V recognizes gain on the exchange as follows:

(*1*) With respect to the exchange group, the amount of the gain realized is the excess of the fair market value of real estate R ($26,500) over its adjusted basis ($20,000), or $6500. The amount of the gain recognized is the lesser of the gain realized ($6500) and the exchange group deficiency ($8000), or $6500.

(*2*) No property transferred by V was allocated to the residual group. Therefore, V does not recognize gain or loss with respect to the residual group.

(*3*) With respect to the taxable exchange of railroad car R for the 50 percent portion of grader A not allocated to the exchange group or the residual group, a loss is realized and recognized in the amount of $200 (the excess of the $1200 adjusted basis of railroad car R over the amount realized of $1000 (fair market value of the 50 percent portion of grader A)).

(D) The basis of the property received by V in the exchange (real estate A, real estate B, and grader A) are determined in the following manner:

(*1*) The basis of the property received in the exchange group is the adjusted basis of the property transferred within that exchange group ($20,000), increased by the amount of gain recognized with respect to that exchange group ($6500), and decreased by the amount of the exchange group deficiency ($8000), or $18,500. This $18,500 of basis is allocated proportionately among the assets received within the exchange group in accordance with their fair market values: real estate A's basis is $5000 ($18,500 × $5000/$18,500); real estate B's basis is $13,500 ($18,500 × $13,500/$18,500).

(*2*) The basis of grader A is $2000.

(e) *Effective date.* Section 1.1031 (j)–1 is effective for exchanges occurring on or after April 11, 1991.

Fred T. Goldberg,

Commissioner of Internal Revenue.

Approved: March 12, 1991.

Kenneth W. Gideon

Assistant Secretary of the Treasury.

[FR Doc. 91–8172 Filed 4–11–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2570

Prohibited Transaction Exemption Procedures; Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final regulation; technical correction.

SUMMARY: This document contains a non-substantive correction by the Department of Labor in the final regulation that describes the procedures for filing and processing applications for prohibited transaction exemptions which appeared in the Federal Register on August 10, 1990 (55 FR 32836).

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–9141.

SUPPLEMENTARY INFORMATION: On Friday, August 10, 1990, the Department of Labor issued a final regulation which describes the procedures for filing and processing applications for exemptions from the prohibited transaction

provisions of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code of 1986 (the Code), and the Federal Employees' Retirement System Act of 1986 (FERSA) (55 FR 32836). By this notice, the Department is making a non-substantive correction to the regulations, as described below.

Correction

The following correction is made in the final regulation relating to the procedures for processing prohibited transaction exemption applications which appeared at 55 FR 32836.

The paragraph designations on lines 2 and 5 of paragraph (c)(4)(i)(B) of § 2570.35, which appear in the first column on page 32850, are revised to use the italicized arithmetic symbols (1) and (2) instead of italicized roman numerals (I) and (II), so that paragraph (c)(4)(i)(B) now reads as follows:

§ 2570.35(c)(4)(i)(B) [Corrected]

* * * * *

(1) The party sponsoring or maintaining the pooled fund, or any affiliate of such party, or

(2) Any fiduciary with investment discretion over the pooled fund's assets, or any affiliate of such fiduciary.

Signed at Washington, DC, this 5th day of April 1991.

David G. Ball,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-8677 Filed 4-11-91; 8:45 am]

BILLING CODE 4510-29-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

(FRL-3921-1)

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice, EPA is approving a request from the Spokane Tribal Council to redesignate the Spokane Reservation in the state of Washington to Class I under EPA's regulations for prevention of significant deterioration (PSD) for air quality. The Class I designation will allow only small increases in ambient levels of particulate matter, sulfur dioxide, and nitrogen dioxide.

EFFECTIVE DATE: June 11, 1991.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Air Programs Branch, Docket #10A-88-1, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, Telephone: (206) 553-4253, FTS: 399-4253.

I. Introduction

Part C of the Clean Air Act provides for the prevention of significant deterioration (PSD) of air quality. The intent of this part is to prevent deterioration of existing air quality, particularly in areas currently considered to be pristine. The Act provides for three basic classifications applicable to all lands of the United States. Associated with each classification are increments which represent the increase in air pollutant concentrations that would be considered significant. Class I applies to areas in which practically any change in air quality would be considered significant; Class II applies to areas in which deterioration normally accompanying moderate well-controlled growth would be considered insignificant; and Class III applies to those areas in which considerably more deterioration would be considered insignificant. Under the 1977 Amendments to the Clean Air Act, all areas of the country that met the national ambient air quality standards were initially designated Class II, except for certain international parks, wilderness areas, national memorial parks and national parks, and any other areas previously designated Class I. The Act allows states and Indian governing bodies to reclassify areas under their jurisdiction to accommodate the social, economic and environmental needs and desires of the local population.

II. Background

On April 27, 1988, the Spokane Tribal Council (herein referred to as the Tribal Council) submitted to EPA an official proposal to redesignate the Spokane Reservation from Class II to Class I. The Spokane Reservation is located entirely within the state of Washington. With their request, the Tribal Council submitted an analysis of the impacts of redesignation within and outside of the proposed Class I area, documentation of the delivery and publication of appropriate notices, a record of the public hearings held on September 10, 1986, and comments received by the Tribal Council on the proposed designation.

On January 18, 1989 (54 FR 1954), EPA proposed to approve Tribal Council's request to redesignate the Spokane Reservation from Class II to Class I. A discussion of the requirements for redesignation and how the Tribal Council complied with those requirements is contained in the January 18, 1989 proposed rulemaking.

III. Response to Comments

EPA received four comments on its proposed approval of the redesignation request. A private citizen and the Confederated Tribes of the Colville Reservation both supported EPA's proposed approval of the Tribal Council's redesignation request. The Board of County Commissioners for Lincoln County, Washington, requested that EPA delay approval until it was determined whether all local governments had been properly notified and whether certain presidential and state executive orders had been properly followed.

EPA has reviewed the procedures followed by the Tribal Council and finds that the notification requirements of the Clean Air Act and EPA regulations have been met. EPA regulations (40 CFR 52.21(g)(4)) establish the requirements that tribal government must follow to redesignate part or all of a reservation. The regulations require that the other States, Indian Governing Bodies, and federal Land Managers whose lands may be affected be notified. The Tribal Council notified the states of Washington and Idaho, the Kalispel and Colville Tribes of Indians, and the Department of Interior, Forest Service, Bureau of Indian Affairs, and Bureau of Reclamation. In addition the Tribal Council notified the EPA and numerous state and local agency governmental entities of its proposed redesignation.

EPA also reviewed the cited presidential and state executive orders and finds that they are not applicable to this redesignation. Presidential Executive Order #12372 requires consultation on proposed federal financial assistance or direct federal development. It does not apply to Indian Tribes requesting redesignation under the PSD provisions of the Clean Air Act or to EPA's proposed approval of such a redesignation. Furthermore, Washington State Executive Order #E083-17 is not

applicable to Indian Tribes or the federal government.

The owner and operator of a nearby uranium mill objected to EPA's proposed approval on the grounds that the Tribal Council had not presented a satisfactory description and analysis of the effects of the proposed redesignation as required by 40 CFR 52.21(g)(2)(iii), specifically on uranium mining and milling operations both on and near the Spokane Reservation. EPA has reviewed the "Spokane Tribe of Indians Air Quality Redesignation Report" and agrees that the discussion of this issue is limited. However, the document points out that these mines and mills are currently inactive, and recognizes that the PSD Class I designation would be somewhat more limiting than the current Class II designation should the mines and/or mills ever be reactivated. Given the uncertain status of the mining and milling activities, a more detailed analysis would be somewhat speculative as the effect of the redesignation, if any, would be dependent on the emissions of the specific operations. Therefore, EPA finds the description and analysis of the effects of the proposed redesignation to be adequate.

IV. Summary of Action

EPA today approves the Spokane Tribal Council's request to redesignate the Spokane Indian Reservation from Class II to Class I under the provisions of section 164 of the Clean Air Act and 40 CFR 52.21(g) of EPA's regulations for the prevention of significant deterioration.

V. Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years and subsequently extended to April 6, 1991.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 4, 1991.

Dana A. Rasmussen,

Regional Administrator.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

Subpart WW—Washington

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2497 is amended by adding paragraph (c) to read as follows:

§ 52.2497 Significant deterioration of air quality.

* * * * *

(c) In accordance with section 164 of the Clean Air Act and the provisions of 40 CFR 52.21(g), the Spokane Indian Reservation is designated as a Class I area for the purposes of preventing significant deterioration of air quality.

[FR Doc. 91–8671 Filed 4–11–91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-3920-9; Docket No. AM075MD]

Denial of Petition for Reconsideration of State Implementation Plan Revision Disapproval; Maryland

AGENCY: Environmental Protection Agency.

ACTION: Notice of denial of petitions for reconsideration.

SUMMARY: EPA is herein providing notice of its decision to deny the Petitions for Reconsideration filed by the State of Maryland, General Motors Corporation, and the Motor Vehicle Manufacturers Association on June 4, 1990. These petitions request that EPA reconsider its final disapproval of a revision to the Maryland State Implementation Plan (SIP) affecting the General Motors Assembly Plant in Baltimore, Maryland (GM–Baltimore) and three satellite plants also located in Baltimore, Maryland (55 FR 12823, April 6, 1990).

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen Field, U.S. EPA Region III (3RC10), 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–6178.

SUPPLEMENTARY INFORMATION: On April 6, 1990, EPA disapproved Maryland's submission of a revision to the Maryland SIP pertaining to automobile and light-duty truck surface coating regulations, applicable to GM–Baltimore and three satellite plants located in Baltimore, Maryland (55 FR 12823). The proposed revision would have allowed GM–Baltimore and those satellite plants to comply with less stringent standards for emissions of volatile organic compounds (VOCs) than the currently approved reasonably available control technology (RACT) standards. On June 4, 1990, the State of Maryland, General Motors Corporation (GM), and the Motor Vehicle Manufacturers Association (MVMA) each submitted Petitions requesting that EPA reconsider its disapproval of that Maryland SIP revision. All three petitioners requested review pursuant to 42 U.S.C. 7607(d)(7)(B) and the Administrative Procedures Act (APA). The rulemaking in question, however, is not one that arises under 42 U.S.C. 7607(d). Accordingly, this review is granted only under the authority of the APA, and it is not appropriate to "convene a proceeding" under the authority of 42 U.S.C. 7607(d)(7)(B) as the petitioners have requested. In general, the reasons for reconsideration asserted by each of

the three petitions address matters not included in the original SIP submission. EPA has, however, decided to respond to the petitioners' concerns, even though they are largely outside the scope of the rulemaking in question. As EPA stated in the April 6, 1990 final action notice, its principal reason for disapproval was based on Maryland's failure to submit any technical data in support of its position that the automobile and light-duty truck surface coating standards for which it was requesting approval constituted reasonably available control technology (RACT). Because EPA was required to act on the entire submittal with one action and because certain elements of the submittal were not approvable, the entire package had to be disapproved. The discussion pertaining to transfer efficiency and alternative compliance method language in the Maryland SIP was included in the final notice only because comments had been raised about those issues during the public comment period. This notice addresses the nine major issues raised in the three Petitions for Reconsideration.

1. GM's and Maryland's Petitions for Reconsideration state that the Maryland SIP allows the use of improvements in transfer efficiency (TE) as an alternative method of compliance; and that EPA cannot retroactively reinterpret Maryland's SIP to bar the use of TE improvement or other alternative compliance methods.

EPA Response: Petitioners have asserted, in their comments on the proposed rulemaking, and in their Petitions for Reconsideration, that the Maryland SIP submittal should have been approved because the higher VOC level coatings allowed by the proposed SIP would have resulted in lower VOC emissions because of improvements in TE. The SIP revision submittal itself does not contain any discussion of TE improvement as a mechanism to be used to evaluate the net emissive effect of the use of the higher VOC coatings to be allowed by the proposed SIP revision. Likewise, the Maryland SIP does not contain any reference to TE. Accordingly, EPA cannot consider changes in TE as part of its evaluation of the submittal. Even if TE had been included in the proposed SIP revision submittal or contained in the original SIP, neither Maryland or any of the Petitioners in this matter has submitted data to establish that a demonstration has been made that TE improvements exist, at the plants that are the subject of the proposed SIP revision, sufficient to offset the increased emissions from the use of the proposed higher VOC content coatings. Further, EPA disagrees with GM's and Maryland's assertion that the EPA approved Maryland SIP allows the use of any and all alternative methods of compliance without EPA approval. The Petitioners' contention that any increase in VOC content that is proposed in a SIP revision must be accepted as presumably satisfying an unnamed, unexplained and undemonstrated alternative compliance mechanism would render EPA review meaningless. The Maryland SIP requires that alternative methods of compliance be demonstrated to achieve equal or greater emission reductions and that adequate records will be maintained to ensure enforceability. A SIP does not automatically permit the use of any compliance method which is expressly not prohibited. States whose SIPs are silent with regard to TE cannot be presumed to allow for the use of TE improvement as an alternative compliance mechanism. Undefined and unspecified alternative compliance mechanisms do not offer assurance that the applicable emission standard will be met. Therefore, an alternative compliance method (ACM) must be fully described in a SIP, so that its efficacy may be determined. As part of a SIP, the ACM is also subject to public review and comment.

GM proposes that *United States* v. *Ford Motor Co.*, No. 88–0987–CV–W–5 (W.D. MO April 23, 1990) and *United States* v. *GM*, 702 F. Supp., 183 (N.D. Tex 1988) provide authority for the proposition that alternative control methods, such as the use of improvements in TE, need not be approved by EPA as SIP revisions. Neither case is on point here, as both deal with EPA enforcement actions against specific sources. Here, Maryland has submitted a proposed SIP revision, and requested EPA approval of the revision. EPA, in its disapproval action, responded appropriately to a State-initiated request to revise its SIP.

2. GM's and Maryland's Petition for Reconsideration state that EPA should have suspended action on the SIP revision, as requested by Maryland, and that by ignoring Maryland's request, EPA deprived Maryland of the opportunity to establish quantification procedures for the use of transfer efficiency (TE).

EPA Response: EPA believes that its responsibility under the Clean Air Act (CAA) with respect to the processing of revisions to SIPs entails approving or disapproving the proposed revisions as soon as possible (CAA section 110 (a)(2) and (3)(A)). Maryland's request for EPA to "suspend consideration" is not an option available to EPA in the processing of SIP revisions. On June 30, 1987, when Maryland submitted the proposed SIP revision pertaining to the surface coating regulations for automobile and light-duty truck assembly plants, it requested that EPA process the proposal. Maryland could have withdrawn the proposal from EPA consideration at any time in the process. As mentioned in the final rulemaking action, although EPA was under no obligation to do so, it informed Maryland of its decision to disapprove the proposal prior to formal notice of EPA's proposed rulemaking action and gave Maryland an opportunity to modify it or withdraw it. GM states, in its Petition for Reconsideration, that by continuing to process the SIP revision, EPA deprived Maryland of the opportunity to submit additional information regarding TE. State submittal of requests for SIP revisions are not open-ended proposals which can be modified substantially without notice and public comment. An additional submission addressing the use of transfer efficiency in determining compliance with the Maryland SIP and any TE procedures would be a substantial change to the Maryland SIP. Therefore, if Maryland's intent in its request to EPA to suspend consideration of the SIP revision pertaining to automobile and light-duty truck surface coating was to submit additional material to allow the use of transfer efficiency and provide TE procedures, the Clean Air Act requirements would have necessitated that the new material be made available for public review and comment. Maryland was free to withdraw its SIP submittal at any time and could at any time have submitted an alternative SIP revision submittal which demonstrated the applicability of TE improvements.

3. MVMA's and GM's Petitions for Reconsideration state that EPA introduced inaccurate and non-relevant TE-related issues into the Final Rule, precluding MVMA from the opportunity to comment on those issues.

EPA Response: The discussion pertaining to TE and TE-related issues did not, and does not, have any bearing in the decision to disapprove the June 30, 1987 Maryland request for a SIP revision, since TE was not discussed in the proposed revision. These subjects were discussed in the final rulemaking notice only in response to comments made during the public comment period for the proposed rulemaking. Therefore, MVMA and any other interested parties had amply opportunity to review and comment on the issues relevant to the

decision to approve or disapprove the proposed SIP revision.

4. GM's and MVMA's Petition for Reconsideration state that EPA's reliance on the Potter letter is misplaced as this letter does not represent a final Agency rulemaking action and that EPA cannot amend the New Source Performance Standards (NSPS) (40 CFR part 60) without notice and comment.

EPA Response: The November 20, 1986 letter from J. Craig Potter, EPA Assistant Administrator, to Dr. Fred W. Bowditch, Vice President, Technical Affairs, MVMA, was mentioned in response to a comment made by Maryland and GM regarding the use of TE in the automobile and light-duty truck NSPS and relationship of the NSPS TE tables to States whose SIPs are silent with regard to TE, as is Maryland's. In mentioning the Potter letter in the April 6, 1990 final rulemaking action, EPA did not attempt to amend the NSPS or indicate that this letter gave EPA the authority to prohibit the use of TE tables in States whose SIPs are silent with regard to TE. Rather, the Potter letter was mentioned because it was addressed to MVMA and continues to be illustrative of EPA's view of this issue.

The Clean Air Act requires that States that have nonattainment areas develop plans to demonstrate how attainment with the ozone NAAQS will be achieved and that require, at a minimum, the adoption of reasonably available control technology (RACT) (CAA section 172(b)(3)). These plans include the adoption and implementation of VOC regulations including those for automobile and light-duty truck surface coating. In order for a nonattainment area's plan to demonstrate how attainment with the NAAQS will be achieved, actual emission reductions from the regulated sources must be obtained. The use of TE tables, without further verification by actual testing, as advocated by GM, does not allow the regulatory agency to determine that emission reductions are actually being achieved. Consequently, the Potter letter, which requires a demonstration of actual reductions, does not establish requirements other than those imposed by the Clean Air Act and the Baltimore plan to demonstrate attainment of the NAAQS. It was referenced in the final rulemaking notice merely as an earlier and more detailed discussion of the issue. The Potter letter is not binding on EPA or the regulated community and the discussion of that letter, in the April 6, 1990 final rulemaking notice was relevant in the context of that discussion.

5. GM's Petition for Reconsideration states that EPA arbitrarily ignored the combined effect of emission caps and VOC emission limits.

EPA Response: As discussed in the final rulemaking notice, emission caps and the higher VOC emission limits proposed by the Maryland submittal do not necessarily provide a lower level of pollution control than the lower VOC emission limits contained in the current federally approved Maryland SIP. Assurance that the combined effect of emission caps and emission limits are at least equivalent to the current Maryland SIP requirements would be provided if the proposal had contained the emission caps *and* the RACT emission limits currently in the Maryland SIP. Since the Maryland submittal did not establish that RACT standards were met, the submission was unapprovable.

6. GM's and Maryland's Petition for Reconsideration state that EPA erred in the application of the Maryland VOC regulations to GM's coating operations.

EPA Response: As discussed in the April 6, 1990, final rulemaking notice, in determining the applicability of any regulation to a coating, EPA evaluates whether these coatings meet the applicability criteria of any regulation and applies the relevant regulation. EPA's applicability determinations for the coatings in the Maryland submittal were logical and appropriate.

7. GM's Petition for Reconsideration states that the Maryland SIP revision should have been approved since it established RACT limits for sources that have not previously been defined.

EPA Response: As discussed in the April 6, 1990, submittal EPA believes that the Maryland SIP submittal was not severable into approvable and unapprovable parts. In order to confirm this, EPA requested that Maryland clarify its request to indicate whether it would allow EPA to sever the submittal and to approve certain portions of the submittal while disapproving other portions of the submittal. On October 5, 1989, Maryland informed EPA that it did not want EPA to separate the submittal. Therefore, because there were certain elements in the submittal that were not approvable, the entire submittal was not approvable.

8. GM's Petition asserts that EPA's rulemaking is unlawful because it was drafted with the apparent purpose of supporting an enforcement action.

EPA Response: EPA is charged with both regulatory and enforcement responsibilities. As stated in the final disapproval, EPA took appropriate steps to ensure that those functions did not improperly influence each other. The disapproval of the Maryland SIP revision in question was determined entirely on the basis of the merits of the proposed revision.

9. GM contends that EPA's delay in acting on the SIP revision was improper.

EPA Response: GM asserted that EPA had a duty to act on the proposed SIP revision within four months of its submission. EPA has consistently asserted that no four-month limit applies to SIP revisions, and that the agency's duty is to respond within a reasonable time. On June 19, 1990, the United States Supreme Court decided this issue in a manner consistent with the EPA view. *See GM* v. *United States*, S. Ct. (No. 89–369).

In summary, the decision to disapprove the proposed Maryland SIP revision was made using information relevant and appropriate to the proposal. The issues raised during the comment period of the proposed rulemaking notice and in the Petitions for Reconsideration regarding TE and alternative compliance methods are not relevant to the approvability of the June 30, 1987, Maryland SIP submittal. EPA believes that the central issue in the decision to disapprove the Maryland submittal as a revision to the Maryland SIP is the lack of documentation supporting an alternative RACT determination for the coating operations at GM—Baltimore and the three satellite plants.

After review of the arguments presented in the GM, Maryland, and MVMA June 4, 1990, Petitions for Reconsideration, EPA believes that it is not appropriate to reverse its April 6, 1990, final action disapproving the SIP revision, pertaining to the automobile and light-duty truck surface coating regulations, to the Maryland SIP.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: March 29, 1991.

A.R. Morris,

Acting Regional Administrator.

[FR Doc. 91–8672 Filed 4–11–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6845

[G-910-G1-0412-4214-11; NMNM 77967]

Withdrawal of Public Land for Arroyo del Tajo Pictograph Site; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 200 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the archeological values at the Arroyo del Tajo Pictograph Site. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504–1449, (505) 988–6071.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, to protect the archeological values at the Arroyo del Tajo Pictograph Site:

New Mexico Principal Meridian

T. 3 S., R. 1 E.,
sec. 14, SW¼, N½SW¼SE¼, SW¼SW¼SE¼, NW¼SE¼SE¼.

The area described contains 200 acres in Socorro County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: April 8, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–8633 Filed 4–11–91; 8:45 am]

BILLING CODE 4310-FB-M

43 CFR Public Land Order 6846

[CO–930–4214–10; COC–48469]

Withdrawal of National Forest System Lands for Protection of Wild and Scenic Values on the South Platte River; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,584 acres of National Forest System lands from mining for a period of 10 years. This action will protect approximately 9 miles of the South Platte River pending a final decision on Wild and Scenic River Designation. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2) for protection of Wild and Scenic River values:

Sixth Principal Meridian

Pike National Forest

T. 10 S., R. 71 W.,
Sec. 22, Nominal S½N½NE¼SE¼, S½NE¼SE¼, E½SW¼SE¼, and SE¼SE¼ (Protraction Diagram No. 8 accepted 5/17/68);
Sec. 26, W½NW¼NW¼;
Sec. 27, E½NE¼, NE¼NW¼NE¼, S½NW¼NE¼, SW¼NE¼, NE¼SW¼, S½NW¼SW¼, S½SW¼, and SE¼;
Sec. 33, Nominal SE¼SE¼ and S½NE¼SE¼ (Protraction Diagram No. 8 accepted 5/17/68);
Sec. 34, Nominal W½NW¼NE¼, SW¼NE¼, E½NW¼, E½NW¼NW¼, SW¼NW¼, SW¼, N½NW½SE¼, and SW¼NW¼SE¼ (Protraction Diagram No. 8 accepted 5/17/68).
T. 11 S., R. 71 W.,
Sec. 3, lots 8, 9, 15, 16, and S. 10 chains of lot 10, and W½SW¼;
Sec. 4, lots 5, 12, and 13, SE¼NE¼SW¼, SE¼SW¼, E½SE¼, S½NW¼SE¼, and SW¼SE¼;
Sec. 9, W½E½, W½SE¼NE¼, E½NW¼, E½NE¼SW¼, SE¼SW¼, NE¼SE¼, and W½SE¼SE¼;
Sec. 16, W½NE¼, W½SE¼NE¼, E½NW¼, NE¼SW¼, E½SE¼SW¼, and SE¼;
Sec. 21, NE¼, E½E½NW¼, SW¼SE¼NW¼, E½SW¼, SE¼NW¼SW¼, E½SW¼SW¼, W½NE¼SE¼, NW¼SE¼, NE¼SW¼SE¼, and W½SW¼SE¼;
Sec. 28, W½W½NE¼, E½NW¼, E½NW¼NW¼, SW¼NW¼, N½SW¼, SW¼SW¼, and NW¼SE¼SW¼;
Sec. 29, E½SE¼, SE¼NW¼SE¼, and E½SW¼SE¼;
Sec. 32, lot 6, E½NE¼, E½W½NE¼, N½NE¼NE¼SE¼, SW¼NE¼NE¼SE¼, W½NE¼SE¼, and SE¼NE¼SE¼;
Sec. 33, lot 6, NW¼NW¼NW¼, S½NW¼NW¼, SW¼NW¼, N½N½NW¼SW¼, SE¼NE¼NW¼SW¼, and E½SE¼NW¼SW¼.
T. 12 S., R. 71 W.,
Sec. 4, lots 5, 6, 10, and 13, and W½SW¼SW¼;
Sec. 5, lots 6 and 7, W½NE¼SE¼, and NW¼NE¼NE¼SE¼;
Sec. 7, E½SE¼SE¼ and SW¼SE¼SE¼;
Sec. 8, W½NE¼, SE¼NE¼NW¼, S½SW¼NW¼, SE¼NW¼, SW¼, N½NW¼SE¼, and SW¼NW¼SE¼;
Sec. 9, NW¼NW¼NW¼;
Sec. 17, W½NE¼NW¼, W½NW¼, and N½NW¼SW¼;
Sec. 18, NE¼NE¼, N½SE¼NE¼, and SW¼SE¼, exclusive of patented lands;
Sec. 19, NW¼NE¼, exclusive of patented lands;
Sec. 31, SE¼SW¼NE¼, SE¼NE¼NW¼, SE¼NW¼, and W½NW¼SE¼.
T. 13 S., R. 72 W.,
Sec. 1, E. 10 chains of lot 7, SW¼SW¼NE¼, E½SW¼NW¼, E½NW¼SW¼, and W½W½SE¼;
Sec. 2, N½SE¼SE¼;
Sec. 11, N. 10 chains of lot 2, S½NE¼NE¼, W½SE¼NE¼, S½NW¼SE¼, and NW¼NE¼SE¼;
Sec. 12, SW¼NE¼NW¼ and S½NW¼NW¼;
Sec. 15, W½SW¼NE¼ and N½NE¼SW¼;
Sec. 16, N. 10 chains of lot 7;
Sec. 20, lot 5 and W½NW¼NE¼.

The areas described aggregate approximately 4,584 acres of National Forest System lands in Douglas, Jefferson, Park, and Teller Counties.

2. The withdrawal made by the order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative

resources other than under the mining laws.

3. The withdrawal will expire 10 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: April 8, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-8666 Filed 4-11-91; 8:45 am]

BILLING CODE 4310-JB-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90-336; FCC 91-84]

Table of Assignments for Air-Ground Stations in the Public Mobile Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In view of the need for air-ground communications service the Commission amended 47 CFR 22.521(b) to assign working channel 5 to Columbia, Missouri; working channel 6 to Wilmington, North Carolina; and working channel 10 to Fort Myers, Florida to satisfy that need.

EFFECTIVE DATE: May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew L. Nachby, Mobile Services Division, Common Carrier Bureau at (202) 632-6450.

SUPPLEMENTARY INFORMATION:

Report and order

Adopted: March 20, 1991. Released: April 4, 1991.

In the matter of amendment of § 22.521(b) of the Commission's rules to include Columbia, Missouri; Fort Myers, Florida; and Wilmington, North Carolina, in the table of assignments for air-ground stations in the Public Mobile Service, CC Docket No. 90-336.

1. On July 9, 1990, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in the above-referenced Docket in response to two petitions filed by COM/NAV Marine (Comnav) and Qualicom Message Center (Qualicom). 5 FCC Rcd 4599 (1990). In that NPRM, the Commission proposed to amend 47 CFR 22.521(b) to assign air-ground channel 5, frequency 454.750 MHz, to Columbia, Missouri; air-ground channel 6, frequency 454.700 MHz, to Wilmington, North Carolina; and air-ground channel 10, frequency 454.875 MHz, to Fort Myers, Florida.

2. Air-ground radiotelephone service is a public radio service between base stations and airborne mobile stations. In creating the air-ground service, the Commission adopted the goal of encouraging the provision of nationwide service utilizing the minimum amount of spectrum necessary. The Commission recognized that its allocation of 12 air-ground channels would permit nationwide service if the channels were used in sufficiently separate geographic areas. *Air-Ground Service*, 22 FCC 2d 716 (1969).

3. Only two comments were filed in response to the NPRM. In its comments, related only to the Fort Myers allocation, Qualicom reiterates the need for air-ground service in that area. Mobile Telecommunications Technologies, Inc. (Mtel), successor to Comnav, stresses the need for air-ground service in the Wilmington and Columbia areas, stating that these locations are 114 and 109 miles, respectively, from the nearest authorized air-ground facilities. Mtel states that this distance deprives both areas from quality air-ground service. Mtel further states that all three cities are principal centers of commerce that are currently without air-ground service.

4. We find that the record in this proceeding supports the need for quality air-ground communications in Fort Myers, Florida; Wilmington, North Carolina, and Columbia, Missouri.

5. In view of the foregoing, *it is ordered*, That 47 CFR 22.521(b) is amended to assign working channel 5 to Columbia, Missouri; working channel 6 to Wilmington, North Carolina; and working channel 10 to Fort Myers, Florida, as set forth below. The effective date of this order will be 30 days after its date of publication in the **Federal Register.**

List of Subjects in 47 CFR Part 22

Communications, Common carriers, Table of air-ground radiotelephone service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 22 of title 47 of the CFR is amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154,303.

2. Section 22.521 is amended by adding locations and channels in paragraph (b) for Fort Myers, FL; Columbia, MO; and Wilmington, NC to read as follows:

§ 22.521 Air-ground radiotelephone service.

* * * * *

(b) * * *

Location	Channel
* * * * *	
Florida:	
* * * * *	
Fort Myers	10
* * * * *	
Missouri:	
Columbia	5
* * * * *	
North Carolina:	
* * * * *	
Wilmington	6
* * * * *	

[FR Doc. 91-8417 Filed 4-11-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 900793-1062]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency interim rule amending current regulations promulgated under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP). This action is needed to provide a period of stability for the Western Pacific Fishery Management Council (Council) and NMFS to carry out a systematic, long-range fishery planning process with full public participation for the longline fishery for swordfish, marlin, and other pelagic species around Hawaii. Despite Council and NMFS notification to prospective participants in the fishery that future participation might not be assured if the Council develops and the Secretary approves a limited entry program for the fishery using participation or investment by June 21, 1990, as a qualifying criterion, new vessels have entered the fishery at a rapid rate. The Council has proposed and the Secretary concurs that an

immediate moratorium on new entry into the fishery is warranted to reduce the crisis atmosphere in the fishery and allow rational planning and management to proceed.

EFFECTIVE DATES: The emergency rule is effective from 0001 hours local time April 23, 1991, to 2400 hours local time July 22, 1991.

ADDRESSES: Copies of the documentation supporting the Council's emergency action request and of the environmental assessment for this action may be obtained from, and comments should be sent to, E. C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213) 514–6660, or Alvin Katekaru, Pacific Area Office, Southwest Region, Honolulu, Hawaii (808) 955–8831.

SUPPLEMENTARY INFORMATION: The longline fishery based in Hawaii has recently undergone a radical shift. This fishery slowly declined through the 1970s and early- to mid-1980s, as the fleet decreased to fewer than 40 vessels. However, the fleet tripled in size to more than 150 vessels by January 1990, as success in targeting swordfish and other species attracted transfers of vessels from other areas (e.g., Atlantic Ocean and Gulf of Mexico) as well as conversions and new vessel investments in Hawaii. The estimated amount of fish landed by longliners increased to almost 10 million pounds in 1989 from approximately 1.2 million pounds in 1987. The value of landings by longline vessels increased from approximately $3 million in 1987, less than five percent of the total value of commercial landings in Hawaii, to almost $22 million, or 50 percent of the total value of commercial landings in Hawaii in 1989.

Concerned about the unknown impacts of this rapid growth on pelagic species stocks, other fisheries, and protected marine animals, the Council has taken several actions. First, the Council established a control date of June 21, 1990, for possible use in determining eligibility for permits should the Council proceed with development of a limited entry program for the fishery (55 FR 30491, July 26, 1990). It was anticipated that this would slow the rate of growth in the fishery as prospective new participants would perceive an economic risk associated with entry into the fisherv after the control date. The Council also requested and the Secretary concurred in promulgating emergency regulations to establish permit, recordkeeping and reporting requirements for harvesting and transshipping vessels and observer placement authority for the Regional Director (55 FR 49285, November 27, 1990).

These actions, however, have not slowed the pace of new entry into the fleet. The Council, NMFS, and many constituents share the concern that the growth of the fleet will continue, thereby exacerbating existing problems. The fishery now may be overfishing the stocks and additional effort and catches would increase the risk of adverse effects on the stocks. There have been many alleged and some documented instances of direct gear conflicts, and additional vessels would raise the probability of more such conflicts. Also, the new longline fishery may be adversely affecting long established troll and handline fisheries for billfish and other pelagic species. While longline landings increased five-fold from 1987 to 1989, troll and handline landings decreased almost 33 percent. The potential for adverse effects increases as the longline fleet increases. Furthermore, recent information suggests there are adverse interactions with endangered species such as Hawaiian monk seals, and additional vessels would increase the risk of further interactions. Finally, if action is not taken immediately to halt further growth and provide a period of stability, it is expected that the industry will conclude that the Council and NMFS are unable to develop a rational management regime and the fishery will be out of control.

The Council concluded, therefore, that an emergency moratorium on additional entry into the Hawaii longline fishery is warranted. The Council proposes that permits for the fishery be limited to persons who certify that they were owners of vessels when those vessels made landings in the FMP management area of longline-caught fish prior to December 5, 1990; that they were persons who were owners of vessels which had engaged in transshipments of longline-caught fish in the FMP management area by December 5, 1990; that they were persons who made a substantial financial commitment or investment in gear by December 5, 1990, for a vessel owned by the person and located in Hawaii by December 5, 1990, so that the vessel could participate in the fishery; or that they were persons who by June 21, 1990, had made a substantial financial commitment or investment in the construction of a new fishing vessel for participation in the fishery and intended contemporaneously with the investment to participate in the fishery. A person who has obtained a permit by having participated in a transshipment activity but who had not met any of the other criteria would be ineligible for a permit to catch or land management unit species. Permits would not be transferable from one owner to another during the emergency period except in cases of extreme hardship such as death or terminal illness preventing the vessel owner from participating in the fishery. A permit holder could, however, replace the originally qualifying vessel with another vessel provided the replacement vessel did not have greater harvesting capacity. In either of these instances, a permit holder could request the Regional Director, in consultation with the Council, to consider a proposed transfer of a permit on a case-by-case basis.

The Council intends to follow the emergency action with a FMP amendment to extend the moratorium for a total of three years. The intent is to provide a period of stability in which the Council, NMFS and industry would continue with data collection and analysis, evaluation of long term management alternatives, including limited entry, and selection of a long-term management regime with full public participation during the moratorium period. This amendment will reassess the need for controls on transferability of permits during the moratorium period. The amendment may use a different date for determining eligibility for permits.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessasry to respond to an emergency situation and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. This rule is implemented for 90 days under section 305(c)(2)(B) of the Magnuson Act and may be extended for an additional 90 days with the agreement of the Council. The Assistant Administrator has determined that conditions in the fishery are so unstable that delaying this moratorium would pose a substantial risk of severe economic and social conflict in the fishery and possibly long-term damage to the fish stocks taken by the fishery.

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to

delay for a full 30 days the effective date of these emergency regulations under sections 553 (b) and (d) of the Administrative Procedure Act. These emergency regulations will be effective April 23, 1991, in order to provide fishermen ample time to comply with these regulations.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that Order.

NOAA prepared an environmental assessment (EA) for this action. The Assistant Administrator concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Southwest Region (See **ADDRESSES**).

The Assistant Administrator has determined that this emergency rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Hawaii. The Council has requested that the State of Hawaii concur with the Assistant Administrator's finding. The State has concurred.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 8, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.2, the following definitions are added in alphabetical order, effective from 0001 hours local time April 23, 1991, to 2400 hours local time July 22, 1991, to read as follows:

§ 685.2 Definitions.

* * * * *

Owner, as used herein, means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (CG–1270) issued by the U.S. Coast Guard for a documented vessel or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel.

* * * * *

Receiving vessel means a vessel of the United States that does not have fishing gear on board the vessel.

* * * * *

Substantial financial investment means documented expenditures of at least $25,000.

Transship means offloading or otherwise transferring billfish and associated species or products thereof to a vessel which does not have any fishing gear on board the vessel.

3. In § 685.5, new paragraphs (m), (n), (o), and (p) are added to be effective from 0001 hours local time April 23, 1991, to 2400 hours local time July 22, 1991, to read as follows:

§ 685.5 Prohibitions.

* * * * *

(m) Have fishing gear on board a receiving vessel or fish for billfish and associated species from a receiving vessel when the receiving vessel is shoreward of the outer boundary of the EEZ around Hawaii;

(n) Receive on board a receiving vessel that is shoreward of the outer boundary of the EEZ around Hawaii, billfish and associated species from a longline vessel that does not have a valid limited entry permit;

(o) Except for receiving vessels, fish for, possess, retain, transship, or land shoreward of the outer boundary of the EEZ around Hawaii, billfish and associated species which were taken by longline gear without a valid limited entry permit required under § 685.15 aboard the vessel; or

(p) Tranfer any permit issued to a vessel under § 685.9 or § 685.15 in violation of the provisions contained therein.

4. In § 685.9, paragraph (a) is suspended and a new paragraph (1) is added effective from 0001 hours local time April 23, 1991, to 2400 hours local time, July 22, 1991, to read as follows:

§ 685.9 Permits.

* * * * *

(1) *General.* Any vessel of the United States using longline gear to fish for billfish and associated species within the fishery management area; or transshipping within the fishery management area billfish and associated species that were taken by longline gear; or receiving in the fishery management area transshipments of billfish and associated species caught with longline gear; or landing billfish and associated species that were taken by longline gear in Hawaii, American Samoa, or Guam must have a permit issued under this section. If, at any time, vessels of the United States are subject to a limited entry system in all or part of the fishery management area, those United States vessels that meet the eligibility requirements of such a system must have a permit issued under this section in addition to a limited entry permit.

5. New §§ 685.12, 685.13, and 685.14 are added and reserved.

6. In subpart A, a new § 685.15 is added to be effective from 0001 hours local time April 23, 1991, to 2400 hours local time July 22, 1991, to read as follows:

§ 685.15 Limited Entry Permits.

(a) *Issuance.* A person is eligible to obtain a limited entry permit under this part for a vessel owned by that person to participate in the pelagic longline fishery in the Hawaiian EEZ if the person certifies that:

(1) The person: (i) Was owner of the vessel at the time the vessel landed or transshipped shoreward of the outer boundary of the EEZ around Hawaii prior to December 5, 1990, billfish and associated species that were taken by longline gear; or

(ii) Was owner of the vessel, which was located in Hawaii or in the EEZ around Hawaii prior to December 5, 1990, and for which the person had made a substantial investment in gear prior to December 5, 1990, so the vessel could be used in the longline fishery; or

(2) The person made a substantial financial commitment or investment by June 21, 1990, for construction of a new vessel and intended at the time the investment was made that the vessel was to be used in the longline fishery in Hawaii or in the EEZ around Hawaii upon completion of construction.

(b) *Duration.* Limited entry permits issued under this section are valid until they are revoked, suspended, modified under 15 CFR part 904, or until 2400 hours local time July 22, 1991, whichever occurs first.

(c) *Transfer.* (1) Limited entry permits issued under this section are not transferable with the sale of vessels, except the Regional Director, in

consultation with the Council, may allow the transfer of limited entry permits in cases of extreme hardship such as death or terminal illness preventing the vessel owner from participating in the fishery.

(2) A limited entry permit issued under this section may, without limitation, be transferred by the permit holder to a replacement vessel owned by that person, provided that the Regional Director determines that the replacement vessel has a harvesting capacity that is comparable to the original permitted vessel. Vessel length, range, hold capacity, gear limitations and other factors shall be considered in making determinations of comparability of vessels' harvesting capacity.

[FR Doc. 91-8686 Filed 4-9-91; 12:49 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 71
Friday, April 12, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSIOIN

10 CFR Parts 71, 170, and 171

RIN 3150-AD87

Revision of Fee Schedules; 100% Fee Recovery

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend the regulations governing the licensing, inspection and annual fees charged to its licensees. The proposed revisions are necessary primarily to implement Public Law 101-508, passed by the Congress on November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority ($465 million) in Fiscal Year (FY) 1991, and the four succeeding years. The proposed rules would affect all applicants, licensees, and holders of certificates of compliance, registrations of sealed sources and devices and approvals of quality assurance (QA) programs. The proposed revisions would increase fees substantially for those entities currently subject to fees. Other entities previously exempt from fees would become subject to the fees in the proposed schedules.

DATES: The comment period expires May 13, 1991. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure only that comments received on or before this date will be considered. Because Public Law 101-508 requires that NRC publish effective rules to collect the revised fees by September 30, 1991, requests for extensions of the comment period will not be granted. Further, the Commission contemplates that any fees to be collected as a result of this proposed rule would be assessed on an expedited basis to ensure collection of the required fees by September 30, 1991, as stipulated in the public law. Therefore, NRC contemplates that the fees, if adopted, will become effective upon publication of the final rule in the **Federal Register** rather than 30 days after publication as is the normal practice. An approximate effective date would be August 1, 1991. Fees would be due 30 days thereafter.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm Federal workdays. (Telepone 301-492-1966).

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555, in the lower level of the Gelman Building.

The agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 are available in the Public Document Room at 2120 L Street NW., Washington, DC in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-4301.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the Commission collects fees under 10 CFR parts 170 and 171. Part 170, "Fees for Facilities and Materials Licenses and Other Regulatory Services", (title 10, Code of Federal Regulations (CFR)) implements Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701). The license and inspection fees assessed under part 170 recover the costs to the NRC of providing individually identifiable services to specific applicants for, and holders of, NRC licenses and approvals. For example, part 170 fees are charged for the NRC reviews of applications for new licenses, review of renewals and amendments to existing licenses, and inspections of applicant's and licensees' facilities. The fee schedules contained in part 170 were last revised on May 23, 1990 (55 FR 21173) (effective July 2, 1990). These fees were based on the FY 1990 budget.

Part 171, "Annual Fees for Power Reactor Operating Licenses", initially established in FY 1987, implements section 3201 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) by charging an annual fee to NRC operating power reactor licensees (55 FR 7610; March 2, 1990). The annual fees recover NRC budgeted costs for generic regulatory activities relating to these licensees. The amount collected in FY 1990 from annual fees, when added to the amounts recovered under 10 CFR part 170 and the Nuclear Waste Fund (NWF), was approximately 45 percent of the NRC budget. For FY 1991, the previous public law required the Commission to recover $157 million or 33 percent of its budget. On this basis, the NRC published the FY 1991 annual fees for operating power reactors based on 33 percent of the President's budget of $475 million on August 17, 1990 (55 FR 33789).

The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), signed into law November 5, 1990, requires that the NRC recover 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing license and annual fees.

II. Analysis of Legislation

Public Law 101-508, section 6101, subtitle B, states the new requirements for user fees and annual charges, which are summarized as follows in the Conference Report to the legislation, (101st Cong., 2d Sess., 136 Cong. Rec. H 12692-93 (daily ed. October 26, 1990)):

Subsection (a)(1) requires the NRC to collect fees and annual charges.

Subsection (a)(2) provides that the first assessment made under this authority shall be made no later than September 30, 1991.

Subsection (a)(3) provides that the last assessment of annual charges made under this authority shall be made no later than September 30, 1995.

Subsection (b) provides that the NRC shall continue to collect fees under the Independent Offices Appropriation Act of 1952 (32 U.S.C. 9701). These fees are intended to recover the Commission's cost of providing any service or thing of value to a person regulated by the NRC.

Subsection (c) requires the NRC to collect, in addition to the Independent Offices Appropriation Act fees under subsection (b), an annual charge.

Subsection (c)(1) authorizes the NRC to impose an annual charge on any licensee of the NRC.

Subsection (c)(2) provides that the aggregate amount of annual charges shall, when added to the Independent Offices Appropriation Act fees collected under subsection (b), equal approximately 100 percent of the NRC's total budget authority for each fiscal year, less any amount appropriated to the NRC from the Nuclear Waste Fund.

Subsection (c)(3) directs the NRC to establish a schedule of annual charges that fairly and equitably allocates the aggregate amount of charges among licensees and, to the maximum extent practicable, reasonably reflects the cost of providing services to such licensees or classes of licensees. The schedule may assess different annual charges for different licensees or classes of licensees based on allocation of the NRC's resources among licensees or classes of licensees, so that the licensees who require the greatest expenditures of the NRC's resources will pay the greatest annual charge.

Subsection (d) defines the Nuclear Waste Fund established by section 302(c) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10222(c).

Subsection (e) amends section 7601 of the Consolidated Omnibus Reconciliation Act of 1985 (Public Law 99-272) to preserve existing authority for the NRC to collect user fees approximating 33 percent of the agency's budget. Following fiscal year 1995, annual charges will be assessed under section 7601 of the 1985 act instead of subsection (c) of the conference agreement."

In the Conference Report, the Congress suggested guidelines that NRC should follow in calculating the annual fee to be assessed. The conferees recognized in directing the Commission to collect the annual fees that, "Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties" and that Congress must provide the agency "intelligible guidelines" for making these assessments. 136 Cong. Rec. at H12692, citing *Skinner* v. *Mid-America Pipeline Co.*, 109 S. Ct. 1726, 1734, (1989). The Conferees stated their belief that "the conference agreement meets these requirements." *Id.* at H12692. The specific guidelines are as follows:

First, the appropriations received by the NRC from the NWF established under section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) for licensing the DOE's nuclear waste management program are not to be recovered by the annual charges and should be subtracted from the amount of the budget authority.

Second, the amount recovered through annual charges its to be reduced further by the amount the NRC receives through fees assessed on licensees under the IOAA through part 170 of the Commission's regulations. The part 170 fees are intended to recover the cost to the NRC of providing individually identifiable services to applicants and holder of NRC licenses. Part 170 fees are not intended to recover the cost of generic activities that benefit licensees generally. The Committee expects the NRC to continue to assess fees under the IOAA so that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services the licensee or applicant receives.

Third, Public Law 101-508 provides, and the Conference Agreement reiterates, that the balance (after subtracting the amounts estimated to be received from the NWF and part 170) of the NRC's annual budget is to be recovered from the NRC's licensees through annual charges. The annual charge should be assessed under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual charges. The schedules of annual charges, which are to be established by rule, should "fairly and equitably" allocate the total amount of the charges to be recovered among its licensees and, to the "maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services" to the licensees. 136 Cong. Rec. at H12692. The conferees recognized that a substantial portion of the NRC's annual expenses, while not attributable to individual licensees and thus not recoverable under the IOAA, are attributable to classes of licensees. Thus, the conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to that class. The conferees recognized that certain expenses cannot be attributed either to an individual or to classes of NRC licensees. The conferees intend that the NRC fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from the licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. 136 Cong. Rec. at H12692, 3.

Fourth, the conferees note that the U.S. Court of Appeals for the District of Columbia Circuit in affirming NRC's part 171 fee schedule concluded that the agency "did not abuse its discretion by failing to impose the annual fee on all licensees", *Florida Power & Light Co.* v. *NRC*,. 846 F.2d 765, 770 (D.C. Cir. 1988) cert denied, 109 S. Ct. 1952 (1989).

Finally, the conferees noted that, under its existing rules, the NRC does not offset amounts paid by licensees as fines and penalties (including interest penalties) against the amount of annual charges to be collected. In addition, the NRC does not seek to recover through the annual charge amounts received from participants in the cooperative nuclear safety research program, the material and information access authorization programs (including criminal history checks under section 149 of the Atomic Energy Act of 1954, 42 U.S.C. 2169), or amounts received for services rendered to foreign governments and international organizations. "The conference agreement does not change these policies. Fines and penalties are assessed because of a failure of a licensee to comply with NRC standards and requirements. The purpose of the fine or penalty would be defeated if their assessment would result in a lowering of the offender's obligation to pay annual charges. Receipts from cooperative, international, and access authorization programs are collected from the entities benefitting from the particular program and are retained and used by the NRC for that program. Inclusion of the amount of these funds in the total amount recovered through the annual charge would result in double payment." 136 Cong. Rec. at H12693.

III. Proposed Action

Public Law 101-508 requires that the NRC recover 100 percent of its budget authority, including the funding of its Office of the Inspector General, less the appropriations received from the NWF for FYs 1991 through 1995 by assessing license and annual fees. The fees for FY 1991 must be collected by September 30, 1991.

The Commission has followed the guidelines in section II, as established by the Congress, in determining the proposed fees to be assessed to comply with the public law. The following description explains the approach taken by the Commission to determine the proposed amounts of the part 170 licensing and inspection fees and the part 171 annual fees to be assessed. Because the NRC must now recover 100 percent of its budget authority rather than 33 or 45 percent as in the past, the approach for updating the fee schedules necessarily varies from the approach taken in the past. The approach taken must ensure that all budgeted costs are

now covered by fees. To ensure that all budgeted costs are covered, the NRC proposes the following actions.

A. Appropriations From the Nuclear Waste Fund

During FY 1990, the Congress made provisions that the amounts budgeted for high-level waste (HLW) costs were to be directly appropriated to the NRC from the NWF. Appropriations received by the NRC from the NWF are not to be recovered by the annual charges. For FY 1991, $19.7 million has been appropriated from the NWF and has been excluded from the budget authority of $465 million. Therefore, NRC must collect approximately $445.3 million in FY 1991 through part 170 licensing and inspection fees and part 171 annual fees.

B. Proposed Amendments to 10 CFR Part 170: Fees for Facilities and Materials Licenses and Other Regulatory Services and 10 CFR Part 71: Packaging and Transportation of Radioactive Material

The NRC proposes six amendments to part 170. These amendments would not change the underlying bases for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions would also comply with the guidance in the Conference Report that fees assessed under IOAA recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, NRC proposes that the agency-wide professional hourly rate, which is used to determine the part 170 fees, be adjusted to include all NRC budgeted overhead and general and administrative (G&A) costs. The hourly rate will be increased by adding the overhead and G&A budgeted costs for the following organizations: Commissioners, Secretary, General Counsel, Government and Public Affairs (except for international safety and safeguards programs), Inspector General, Enforcement, Investigations, Small and Disadvantaged Business Utilization and Civil Rights, the Technical Training Center, Advisory Committee on Nuclear Waste, Advisory Committee on Reactor Safeguards, Atomic Safety and Licensing Appeal Panel, and Atomic Safety and Licensing Board Panel. Most of these overhead and G&A organizations were previously excluded by the Commission from fee recovery (42 FR 22149; May 2, 1977). They are now being included because the Commission must recover 100 percent of its budget authority. As a result of including the additional organizations, the professional hourly rate in § 170.20 will increase by 25 percent (from $92 to $115 per professional staff hour). The NRC proposes that the current part 170 licensing and inspection fees for all applicants and licensees be increased to reflect this increased hourly rate.

Second, the Commission proposes to amend 10 CFR parts 71 and 170 to recover costs expended by the NRC in conducting inspections related to casks, packages, shipping containers, and part 71 vendor QA programs and inspections conducted of manufacturers and initial distributors of sealed sources and devices. The NRC has completed Phase One of the transportation package-supplier inspection program. During this pilot program, six package-supplier (vendor) inspections were conducted. The inspections focused on implementation of procedures and approved QA programs. Inspection fees were not assessed for the six inspections conducted in Phase One because these inspections were pilot inspections designed to determine the need for safety inspections in the package-supplier industry. On the basis of the results of Phase One, the NRC plans to continue the program. Therefore, consistent with NRC policy of charging for health and safety inspections, the proposed rulemaking would recover the full cost of routine and nonroutine inspections through fees. Routine inspections are estimated to range in cost from $6,000 to $22,000. Fees associated with the review of casks, packages, shipping containers, and vendor QA programs are currently assessed under §170.31, fee categories 10A and 10B. A similar pilot program has been conducted for inspections of manufacturers and initial distributors of sealed sources or devices containing a sealed source. The NRC plans to continue this program as well. Therefore, the proposed rule would recover the costs of conducting routine and nonroutine inspections through fees. Fees associated with the review of sealed sources and devices are currently assessed under § 170.31, fee categories 9A through 9D.

Note that similar inspection fees were established by the NRC, effective August 17, 1990, for activities relating to Certificates of Compliance for spent fuel storage casks and for inspections related to the storage of spent fuel (55 FR 29181; July 18, 1990).

Third, the Commission proposes to charge inspection fees for those inspections conducted by the Commission of Agreement State licensees who perform work in non-Agreement states under the reciprocity provisions of 10 CFR 150.20. Under this provision of the NRC regulations, any person holding a specific license from an Agreement State authorizing use at temporary job sites is granted a general license to conduct the same activity in non-Agreement States for a period not to exceed 180 days. The NRC conducts periodic inspections of activities performed under the reciprocity provisions. The NRC proposes that the inspection fees shown in the specific categories of 10 CFR 170.31 be assessed to those Agreement State licensees that are inspected by the Commission. For example, a radiographer performing work in the non-Agreement State and inspected by the Commission would pay the applicable routine inspection fee of $1,200 in fee category 3.0. Similar inspection fees are assessed by some Agreement States to NRC licensees who perform work in Agreement States under the reciprocity provisions and are inspected by Agreement State personnel.

Fourth, the NRC proposes that § 170.2, Scope, be broadened to clarify the Commission's intent to more fully collect fees for identifiable services. For example, fees based on the full-cost recovery method are proposed for preapplication license reviews for potential construction permit and operating license (CP/OL) applicants for reactors, fuel facilities, and low-level waste (LLW) disposal even though an application may never be filed.

Fifth, the NRC proposes that the ceiling of $50,000 on part 170 fees for reactor and material topical report reviews and amendments to topical reports be removed and that full costs be recovered for these services. The Commission in the past had decided to retain a ceiling on fees for the review of topical reports to encourage submission of these reports (55 FR 21173; May 23, 1990). However, the Commission may legally charge the full cost of processing an application for which the applicant receives a special benefit not available to the public at large. *Mississippi Power and Light Co.* v. *NRC*, 601 F.2d 223,230 (5th Cir. 1979), cert. denied 444 U.S. 1102 (1980); see also *Phillips Petroleum Co.* v. *FERC*, 786 F.2d 370,376 (10th Cir. 1986) (upholding full cost fees, under IOAA, by FERC on licensees despite benefits to the general public). Therefore, following Congressional guidance that each licensee or applicant pay the full costs to NRC of all identifiable regulatory services received, the Commission proposes to remove the $50,000 ceiling.

Sixth, the NRC proposes to change its policy for exempting certain classes of licensees from fees by revoking the exemption provisions in § 170.11(a) (1),

(2), (8), (9), and (11). Specifically, the Commission proposes to establish licensee fees for export and import license applications previously exempted from fees under § 170.11(a)(1) and (2). Fees will be established in part 170 for the export or import licensing of a production or utilization facility, and for export or import licensing of byproduct material, source material, or special nuclear material. Because the fees will be assessed under part 170 pursuant to the statutory authority of the IOAA, the fees will be based on recovering the professional staff hours and contractual services costs expended for the review in carrying out the specific regulatory activities mandated by the Atomic Energy Act with respect to the issuance of export licenses; e.g., processing the application, and making any necessary findings before issuance of a license. The Commission does not believe that such fees violate the Constitutional restrictions of Article I, section 9, clause 5, (export clause) which states that: "No tax or duty shall be laid on articles exported from any state," because these charges are to recoup the costs of services rendered and are therefore neither taxes nor duties. The Commission has not previously addressed the legal issues and invites comments on this possible Constitutional restriction or legal barrier to the collection of export license fees. The export license fees are expected to range from $1,300 to $7,000, depending on the type of material or equipment being exported and the type of action (new license or amendment). Any review of a route approval required in conjunction with an import license will also be assessed fees under part 170.

Holders of licenses authorizing depleted uranium as shielding only in devices and containers who were previously exempt from fees under § 170.11(a)(8) will be subject to the proposed fees. Similarly, the NRC proposes to assess fees to State and local governments and Indian Tribes and Indian organizations. These licensees were previously exempted from fees under § 170.11(a)(9) and (11). Under the proposed rules, these licensees will pay the licensing and inspection fees established in part 170 for the fee category(ies) applicable to the license. For example, a State agency that is authorized to possess and use a soil-density gauge containing radioactive material will pay the applicable fees for fee category 3P. These licensees plus Federal agencies with NRC licenses or certificates will also become subject to the new annual fees established in part 171 for nonpower reactor licenses and materials licenses. At this time, the Commission is not proposing to charge fees to nonprofit educational institutions but comments are specifically requested on whether the Commission should assess fees to these institutions.

The NRC estimates that approximately $79.5 million will be recovered in FY 1991 from the fees assessed under 10 CFR part 170. The proposed changes, including the revised hourly rate, will have minimal effect on FY 1991 collections because the final rule will not become effective until the last month or so of the fiscal year. The amount recovered is expected to increase by approximately 25 percent in FY 1992 after the proposed changes become effective.

C. Proposed Amendments to 10 CFR Part 171: Annual Fees for Power Reactor Operating Licenses

The NRC proposes that this regulation, which currently establishes annual fees for operating power reactors only, be modified to increase the annual fees for operating power reactors, and add annual fees for nonpower (test and research) reactors, fuel cycle and materials licensees, including holders of Certificates of Compliance, sealed source and device registrations, QA program approvals, and Federal agencies who are licensed by the NRC. All annual fees in the proposed amendments to part 171 would be based on the increased hourly rate previously described.

1. Costs Attributable to Power Reactors

The NRC proposes that two changes to made to the operating power reactor annual fee.

First, part 171 would be expanded to include additional regulatory costs that are attributable to power reactors other than those costs that have previously been included in the annual fee for operating power reactors. These additional costs include the costs of generic activities that provide a potential future benefit to utilities currently operating power reactors. These generic activities are associated with reactor decommissioning, license renewal, standardization, and CP and OL reviews. Also included would be NRC generic costs that are primarily related to power reactor licensees, but that support other NRC applicants and licensees (e.g., costs to update 10 CFR part 20 of the Commission's regulations and to operate the Incident Response Center) because the NRC would incur these costs in about the same amount to regulate power reactors even if they did not support other applicants and licensees.

Second, the NRC proposes that the annual fee for operating power reactors include those activities related to specific power reactors that are not billed under part 170 (e.g., NRC staff participation in contested hearings, responses to Congressional inquiries regarding specific reactors, orders issued pursuant to 10 CFR 2.204 and amendments resulting specifically from these orders, responses to 10 CFR 2.206 petitions, and responses to reactor allegations). Because the Commission is adhering to its previous policy decisions that these types of activities not be included in part 170 (42 FR 22159; May 2, 1977 and 49 FR 21297, 21300; May 31, 1984), the costs of these activities would be recovered through the annual charge under part 171.

In the proposed amendments to part 171, the Commission has continued to identify and has determined power reactor annual fees that are based on the type of reactor (PWR, BWR), the reactor vendor (e.g., General Electric, Westinghouse), and the location of the reactor (e.g., seismic review costs may vary from region to region). The Commission proposes to continue to consider requests for exemption from the full reactor annual fee for the smaller, older power reactors (e.g., Big Rock Point, Yankee Rowe, and Ft. St. Vrain) as well as TMI–2 which is permanently shut down. However, the Commission reemphasizes its intent to grant exemptions sparingly (51 FR 33227; September 18, 1986). Therefore, the Commission strongly discourages licensees from filing exemption requests. As the Commission has indicated previously, if a power reactor licensee has only the authority to possess nuclear material and the Commission has received a request from the licensee to amend its license to permanently withdraw its authority to operate the reactor or the Commission has permanently revoked such authority, the licensee is not subject to the annual fee under this part for that power reactor (51 FR 33228; September 18, 1986). Therefore, with respect to power reactors that are permanently shut down but for which the Commission has not granted a possession-only license (e.g., Shoreham and Rancho Seco), the Commission intends to assess these reactors the full annual fee until a possession-only license is issued.

Considering the above modifications, budgeted costs of approximately $290.9 million have been identified as being attributable to the operating power reactor class of licensees. Thus, by

modifying part 171, the base annual fee for an operating power reactor is expected to increase from approximately $1 million to approximately $2.6 million.

2. Costs Attributable to Other than Power Reactors

Pursuant to Public Law 101–508, the NRC is also proposing to amend part 171 to establish and assess annual fees for costs applicable to nonpower reactors, fuel cycle and materials licensees. Fuel cycle licensees would include fuel fabrication facilities, spent fuel storage casks and facilities, uranium recovery facilities, those who hold transportation Certificates of Compliance, and approvals of QA programs, and materials licensees, including those who hold sealed source and device registrations. Federal agencies licensed by the NRC would also be charged an annual fee on the basis of the type of license or certificate they possess. Consistent with the guidance in the Conference Report, annual fees will be assessed for NRC generic regulatory costs and other costs not recovered under part 170 but attributable to these licensees and holders of certificates and approvals. The NRC costs are associated with generic activities (e.g., rulemaking, upgrading safeguards requirements, modifying the Standard Review Plans, overseeing regional programs, and developing inspection programs) and other activities not billed under part 170 (e.g., event and allegation followup, contested hearings and responses to § 2.206 petitions) that are required to regulate these licensees and certificate holders. The following discussion explains the assessment of the annual fees for nonpower reactors and the various classes of fuel cycle and materials licensees.

Nonpower Reactors. All test and research reactors subject to part 170 license and inspection fees are included in this class. Those nonpower reactors operated by nonprofit educational institutions are excluded. Budgeted costs of approximately $500,000 have been identified as being attributable to licensees who are licensed to operate test and research reactors. An annual fee of $50,000 is proposed for each test and research reactor.

Major Fuel Facilities. The licensees in this class are predominantly persons with licenses authorizing them to possess and use significant quantities of special nuclear material in fuel processing and fabrication or significant quantities of source material in the conversion of uranium hexafluoride (UF_6). Ten facilities have been identified and included in this class of licensees: Six manufacturers of low-enriched fuel, two manufacturers of high-enriched fuel, and two who operate UF_6 conversion facilities. The NRC budgeted costs attributable to these facilities are approximately $10.6 million. The Commission is proposing to establish and assess an annual charge to these major fuel facilities to recover NRC generic budgeted costs that are attributable to these facilities. The annual fee per facility would range between $300,000 and $2.3 million depending on the type of license (e.g., high enriched uranium, low enriched uranium, and UF_6 conversion).

Storage of Spent Fuel. The licensees in this class include holders of licenses, including a general license, to receive and store spent fuel at an Independent Spent Fuel Storage Installation (ISFSI) and holders of spent fuel storage cask Certificates of Compliance. The NRC costs attributable to these licensees are $1.5 million. The proposed annual fee is $187,500 per license or certificate holder.

Uranium Recovery Operations. Licensees that would be subject to annual fees in this class would include mills, in situ leaching facilities, heap leaching facilities, ore buying stations, ion exchange facilities, and metal extraction facilities. The NRC budgeted generic costs for these types of licensees are $1.9 million, resulting in an annual fee for these facilities ranging from $51,000 to $77,000, depending on the type of license (e.g., mills, in situ leaching, and heap leaching) and the status of operation (e.g., operating, in standby, in decommissioning, and in reclamation).

Transportation of Radioactive Material. Certificate holders for approved casks, packages and shipping containers, and holders of approval for QA programs are included in this class and would be subject to an annual fee. The NRC budgeted costs attributable of these types of certificates and approvals are $4.8 million. The annual fee for holders of Certificates of Compliance will be between $11,000 and $71,500, depending on the type of transportation package. The annual fee for holders of QA approvals would be $500 for each use only approval and $9,100 for each use and fabrication approval.

Materials Licensees. Licensees in this class would include but not be limited to doctors, hospitals, radiographers, well loggers, gauge users, sealed source and device registrants, and nuclear laundries, all of which are currently assessed fees under part 170. In order to recover the $27.2 million in budgeted NRC costs attributable to this class of licensees, NRC proposes that all material licensees, except those specifically exempted in § 170.11(a)(4), pay annual fees. The annual fees for most of these licenses are expected to range from $300 to $10,900, depending on the type of license held. The proposed annual fee for a "master" materials license of broad-scope is $200,000.

Federal agencies that hold an NRC license or certificate would also pay these annual fees. With respect to Federal agencies that have NRC licenses, the Commission has followed the mandate of the IOAA that specifically indicates that fees should not be assessed to Federal agencies for identifiable services rendered. Public Law 101–508, which now requires that the NRC recover 100 percent of its budget authority, is silent with respect to recovery of NRC costs through annual fees for costs that are attributable to other Federal agencies. Because Public Law 101–508 does not contain a restriction on charging Federal agencies analogous to the IOAA, the NRC proposes to recover its costs under part 171, for those Federal agencies that hold NRC licenses or certificates.

Under the proposed rule, Federal agencies with NRC licenses will pay annual fees, but not licensing and inspection fees under part 170, that are the same as those paid by other NRC licensees. For example, Veterans Administration (VA) hospitals, Army irradiators, and National Aeronautics and Space Administration (NASA) radiographers would be assessed an annual fee that is based on the fee category assigned the license. For instance, NASA would pay the annual fee assigned to fee category 3.0. for a license authorizing radiography. In addition, a new annual fee category 16 has been established for those military "master" broad licenses that authorize multiple activities at multiple locations under the same license.

With respect to exemptions for materials licenses, the Commission proposes to establish a very high threshold for eligibility for any requested exemption to the annual fees. The NRC will rarely grant an exemption because of the requirement by Congress that the NRC recover 100 percent of its budget authority through fees. Therefore, the NRC strongly discourages licensees from filing exemption requests. The Commission notes that the impact of the proposed rule on small entities will be evaluated in the Regulatory Flexibility Analysis. Those materials licensees that hold a possession only license and from whom the Commission has received a request from the licensee to amend its license to permanently withdraw its authority to operate or the

Commission has permanently revoked such authority, will not be subject to the annual fees under this part for that materials license.

These adjustments to part 171 do not change the underlying bases for part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The recommended changes are consistent with the Congressional guidance in the Conference Report, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principles that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee." 136 Cong. Rec., at H12692–93.

If the Commission decides not to recover the costs of export licensing under part 170 and annual fees for Federal agencies under part 171 as proposed, then the NRC intends to assess these costs to operating power reactors in order to recover 100 percent of its budget authority.

3. Costs Remaining to be Recovered After Revisions Identified in Items 1 and 2 of this Section III

After the proposed amendments to parts 170 and 171, shown in items 1 and 2 are considered, approximately $28.4 million would remain to be collected in order to meet the 100 percent recovery requirements of the public law (See Table I).

TABLE I.—RECOVERY OF NRC'S FY 1991 BUDGET AUTHORITY

Proposed recovery method	Estimated amount ($ in millions)
Nuclear Waste Fund	$19.7
Part 170 (license and inspection fees)	[1] 79.5
Part 171 (annual fees)	
Power Reactors	290.9
Nonpower Reactors	.5
Fuel Facilities	10.6
Spent fuel storage	1.5
Uranium Recovery	1.9
Transportation	4.8
Material Users	27.2
Subtotal	337.4
Costs remaining to be recovered not identified in items 1 and 2 above	28.4
Total	$465.0

[1] Amount of recovery is expected to increase by approximately 25% in FY 1992 after the proposed rule is issued as a final rule and becomes effective. The proposed amendments including the hourly rate will have minimal effect on FY 1991 collections because the final rule will not be effective until the last month or so of the fiscal year.

The budgeted costs of $28.4 million that remain to be recovered are for the following activities:

(a) Activities not attributable to an existing NRC licensee or class of licensees:

—Reviews for Federal agencies including the Department of Energy (DOE) activities that do not result in issuance of a license or certificate.
—The Office of Governmental and Public Affairs (GPA) international cooperative safety program and GPA's and the Office of Nuclear Material Safety and Safeguards' (NMSS) international safeguards activities;
—LLW disposal generic activities; and
—Uranium enrichment generic activities;

(b) Activities not currently assessed 10 CFR part 170 licensing and inspection fees on the basis of existing Commission policy:

—Licensing, inspections, and other NRC activities for nonprofit educational institutions; and
—Licensing reviews of standard reactor design applications.

These activities have been examined and evaluated by the Commission to determine how their costs should be recovered, through annual fees, considering—

—The beneficiary of the NRC activities,
—The NRC licensee's ability to pay the fees; and
—The NRC administrative burden associated with determining and collecting the fees and the discretion afforded NRC by the courts and conferees not to assess the annual fees on all licensees.

To recover the budgeted costs of $28.4 million for these activities, the Commission considered the following options:

(1) Allocating costs to operating power reactor licensees only.

(2) Allocating costs to all NRC licensees currently subject to the fee regulations (i.e., reactor, fuel cycle facility, and materials licensees).

(3) Allocating costs to each individual licensee, classes of NRC licensees or persons that receive the NRC services, where legally feasible. (This option will also require selection of Option 1 or 2 above to achieve 100 percent recovery.)

The Commission has considered only those alternatives that would ensure that all NRC activities are covered by fees so that approximately 100 percent of the budget is recovered.

Alternatives that lead to less than 100 percent collection of the budget in FY 1991 have not been considered because, as Congress recognized, certain budgeted costs are not associated with an NRC licensee or class of licensees. Nonetheless, Congress required these costs to be collected.

Activities not attributable to an existing NRC licensee or class of licensees. This first major category of costs covers those NRC activities that are not attributable to an existing NRC licensee or to a class of licensees. This category includes the reviews of certain DOE activities and actions; GPA international cooperative safety program; NMSS and GPA international safeguards activities; the Office of Nuclear Regulatory Research's (RES) and NMSS generic low-level waste activities; and NMSS and RES generic uranium enrichment activities.

With regard to DOE, the Office of Nuclear Reactor Regulation (NRR) reviews DOD/DOE reactor projects and NMSS performs safety and environmental reviews of DOE activities and actions under the West Valley Demonstration Project Act and Uranium Mill Tailings Radiation Control Act (UMTRCA). The NRC does not issue licensees for these reviews. These reviews result in approximately $3.7 million in NRC budgeted costs. Because over 95 percent of these costs are for NRC regulation of DOE West Valley and UMTRCA activities, both of which indirectly benefited operating power reactors, the NRC proposes that these costs be included in the annual charge for operating power reactors (Option 1).

The GPA international cooperative safety programs and the NMSS and GPA generic international safeguards program, which includes implementation of the United States/International Atomic Energy Agency (US/IAEA) Safeguards Agreement, result in budgeted costs of approximately $4.9 million. These activities are not directly associated with any NRC licensee or any one class of licensees. However, approximately 70 percent of these costs are associated with GPA's international cooperative safety program that has a major component devoted to activities associated with reactors. U.S. power reactors receive an indirect benefit from this component. For example, the NRC, as part of its cooperative exchange program, receives extensive reactor incident information and valuable research results from foreign countries which are used to assist in improving the safe operation of U.S. power reactors. The other 30 percent of the costs are for activities associated with international safeguards, which primarily support nuclear nonproliferation. However, these

activities do provide a minor benefit to power reactors (e.g. IAEA inspects reactors). Because a substantial portion of the total NRC costs for international activities benefits reactors, the NRC proposes to include the costs in the annual charge for operating power reactors (Option 1).

The generic budgeted costs relating to RES and NMSS LLW disposal activities amount to approximately $9.8 million. The existing three LLW disposal facilities are licensed by Agreement States. Therefore, the LLW generic regulatory costs are not attributable to an existing NRC licensee or class of licensees. However, approximately 60 percent of LLW is generated by power reactors, 20 percent by fuel facilities, and 20 percent by materials licenses. Because these NRC licensees will indirectly receive the benefits from these NRC LLW expenditures, the NRC proposes that these licensees pay the costs of these activities (Option 2). The distribution of the costs would be based on the estimated amount of waste generated. Therefore, the Commission is proposing to assess approximately 60 percent of the LLW generic costs ($6 million) to operating power reactors, approximately 20 percent to fuel cycle facilities ($1.9 million) and approximately 20 percent to materials licenses ($1.9 million). Once the NRC issues a LLW disposal license, the Commission will reconsider the assessment of generic costs attributable to LLW disposal activities.

NMSS and RES are establishing the regulatory framework to regulate uranium enrichment facilities. The budgeted costs for these activities are approximately $1.1 million. Although an application has been submitted to construct a uranium enrichment facility, no uranium enrichment licensee now exists upon which to assess an annual charge for these generic costs. Because uranium enrichment provides indirect benefits to operating power reactors, Option 1 is proposed (i.e., recover the cost through annual charges to operating power reactors). Once the NRC issues a uranium enrichment facility license, the Commission will reconsider the assessment of generic costs attributable to uranium enrichment facilities.

Activities and budgeted costs not currently assessed 10 CFR part 170 licensing and inspection fees based on Commission policy. The second major category of costs covers those activities for which a specific identifiable applicant or licensee receives NRC services and for which fees could be assessed under Part 170. However, fees are not currently assessed for these activities as a result of existing Commission fee exemption and fee deferral policy decisions.

The first group of activities includes license reviews and inspections for nonprofit educational institutions, (i.e., license reviews and inspections of certain nonpower reactors and materials users). Currently these expenses, approximately $2.2 million, are exempted from part 170 licensing and inspection fees (§ 170.11(a)(4)). This exemption is based on the Commission's long-standing policy of exempting educational institutions that use materials for the teaching and training of students or research (33 FR 10923; August 1, 1968). Note however, that the costs of any commercial activities that are authorized by the licenses are recovered through fees under part 170. For example, fees are charged for licenses that authorize use of strontium-90 eye applicators in the treatment of eye disease and xenon-133 for blood flow pulmonary functions; distribution of *in vitro* kits and radiopharmaceuticals; services the licensee provides to other persons or licensees for a charge, such as soil density measurements and installation, calibration, and leak testing of equipment containing radioactive material, and use of licensed material for consulting services. Because many of these entities have limited ability to pass regulatory costs to their clients, assessing fees could affect the ability of these organizations to continue to perform the licensed services. In addition, these organizations provide broad national support and benefits to the education and health care fields.

The Commission vote was evenly divided on the issue of how these costs should be recovered: Two in favor of removing the exemption and assessing fees to non-profit educational institutions and two in favor of maintaining the current exemption from fees. In the event of a tie vote by the Commission, the current policy is maintained. Therefore, the Commission proposes to continue the current exemption from fees as established in § 170.11(a)(4). Because the NRC licensing and inspection activities associated with these licensees do not provide benefits to any other NRC class of licensees, the criteria of who can equitably and practicably afford to pay in this case lead to proposing Option 1 (i.e., allocate the costs to operating power reactors). The Commission, however, invites public comment on whether part 170 licensing and inspection fees and part 171 annual fees should be charged to nonprofit educational institutions, and may assess fees on these institutions when it promulgates its final rule.

The other activity for which a specific recipient of an NRC service can be identified is the review of specific applications for standard reactor designs and early site permits. Consistent with NRC policy to promote standardization, existing NRC regulations defer, for up to 15 years, NRR costs for reviewing standard reactor designs. This is equivalent to the deferral of approximately $5.4 million in FY 1991.

The Commission vote on how to recover the cost of standardized design reviews was evenly divided: two votes to maintain the current deferral policy, and two votes to change the policy and assess the review costs to the vendors under part 170 as the work progresses on the standardized designs. Because of the tie vote, the Commission proposes to continue its current deferral policy. The Commission proposes to recover the deferred costs from operating power reactors (Option 1) because the reactor licensees will realize reduced future part 171 fees when vendors for standard plants pay the deferred costs for a particular year as required by part 170. The Commission specifically invites the public to comment on whether NRC should charge part 170 licensing fees to the vendors for standardized plant and early site reviews and may alter its position and repeal the deferral policy in its final rule.

The final rule revising part 170 license fees will not become effective before August 1991, which will be too late for the Commission to collect the budgeted costs of $1.3 million for its export and import activities in FY 1991. Therefore, to comply with the requirements of Public Law 101–508, the NRC proposes to assess these costs to operating power reactors for FY 1991 only, on the basis of the criteria of who can equitably and practicably afford to pay. In future years, the costs associated with these activities are expected to be recovered under the revised part 170.

In summary, the Commission is proposing that the $28.4 million identified for the two categories described above, be distributed between the NRC classes of licensees as follows:

$24.6 million to operating power reactors;

$1.9 million to fuel facilities; and

$1.9 million to other materials licenses.

This distribution results in a proposed additional charge of approximately $222,000 per operating power reactor, $190,000 for each fuel facility, and $570

for each materials licensee in a category that generates a significant amount of low level waste. When added to the base annual fee of approximately $2.6 million per reactor, this will result in an annual fee of approximately $2.8 million per operating power reactor. The total fuel facility annual fee would be between $500,000 and $2.5 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license. These proposed additional charges would recover NRC costs not directly or solely attributable to a specific class of NRC licensees. However, because of the previously discussed Commission policies, the NRC proposes to recover them from the designated classes of licensees. In proposing this approach, the Commission notes that in prior litigation over NRC annual fees, the U.S. Court of Appeals for the District of Columbia concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees," *Florida Power & Light Co.* v. *NRC*, 846 F.2d 765,770 (D.C. Cir. 1988), cert. denied 109 S. Ct. 1952 (1989). As noted earlier, the conferees on Public Law 101–508 have acknowledged the D.C. Circuit's holding that the Commission was within its legal discretion not to impose fees on all licensees.

The NRC also proposes that for FYs 1992 through 1995, those annual fees of less than $100,000 be billed once a year during the first quarter of the FY. Because there are thousands of licensees who would pay less than $100,000 per year, quarterly billings would impose additional administrative costs upon the NRC that cannot be justified. Annual fees of $100,000 or more would be billed on a quarterly cycle.

IV. Section-by-Section Analysis

The following analysis of those sections that would be affected under these proposed rules provides additional explanatory information. All references are to title 10, chapter I, U.S. Code of Federal Regulations.

Part 71

Section 71.0 Purpose and Scope

Section 71.0 (c) would be amended to include certificate of compliance holders.

Section 71.4 Definitions

In this section, the term "certificate holder" is being added to mean a person who holds a Certificate of Compliance or other package approval issued by the Commission.

Section 71.93 Inspection and Tests

Section 71.93(a) is being broadened to include certificate holders as well as licensees.

Part 170

Section 170.2 Scope

This section is modified to add new paragraphs (o) and (p). Paragraph (o) will expand the scope of part 170 to cover those persons who may be potential applicants and file documents, analyses, or reports for Commission review and consult with the Commission. This may include any company, corporation, individual, unit of State or local government, or any other party over whom NRC has regulatory authority under its enabling legislation or as established in attendant regulations. This amendment is to clarify that, in the event a person aborts the attempt to develop and seek a license and never files an application with the NRC after the NRC has spent time reviewing documents, analyses, or reports, that the NRC will recover, through fees, any preapplication/licensing review costs. Paragraphs (p) will expand the scope of part 170 to cover an applicant for or holder of an import or export license issued in accordance with part 110 of this chapter. These actions are consistent with the intent of Congress to assess fees so that each applicant, licensee, or person pays NRC the full cost of all identifiable regulatory services received by the applicant, licensee, or person.

Section 170.3 Definitions

Two definitions have been added: "Act," meaning the Atomic Energy Act, and "Agreement State," now used in part 170 because Agreement State licensees who receive NRC inspections under the reciprocity provisions of 10 CFR 150.20 bill become subject to the inspection fees of this part.

Section 170.11 Exemptions.

This section is being amended to revoke the current exemptions in § 170.11(a)(1), (2), (8), (9) and (11). As a result, import and export licensees will be subject to the full cost fees established in § § 170.21 and 170.31, and State and local agreement agencies and Indian Tribes and Indian organizations, and holders of licenses authorizing depleted uranium as shielding only in devices and containers will be subject to the licensing and inspection fees in § 170.31 as well as the annual fees established for the first time in § 171.16.

Section 170.20 Average Cost Per Professional Staff Hour

This section is amended to reflect an agency-wide professional staff-hour rate based on FY 1991 costs. Accordingly, the professional staff-hour rate for NRC for FY 1991 for all fee categories that are based on full cost is $115 per hour, or $200,900 per direct FTE. This rate is based on the FY 1991 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF as follows:

1. All direct FTEs are identified by mission area (see Table II).

TABLE II.—ALLOCATION OF DIRECT FTES BY MISSION AREA

Mission area	Number of direct FTEs [1]
Reactor Safety and Safeguards regulation	1015.2
Nuclear safety research	148.1
Nuclear material and low-level waste safety and safeguards regulation	273.9
Special and independent reviews, investigations, and enforcement	71.0
Nuclear material management and support	22.0
Total direct FTE	[2]1530.2

[1] Regional employees are counted in the office of the program each supports.
[2] In FY 1991, 1530.2 FTEs of the total 3,160 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,629.8 FTEs will be considered overhead and general and administrative.

2. In determining the cost for each direct labor FTE the following approach is used: NRC budgeted costs are allocated to the following four major categories (see Table III):

(a) Salaries and benefits.
(b) Administrative support.
(c) Travel.
(d) Program support.

3. Direct programs support, the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the proposed rule published December 1, 1989 (54 FR 49763), and excluding direct Program Support funds, the remaining $307.4 million allocated uniformly to the direct FTEs (1530.2) results in a rate of $200,900 per FTE for FY 1991. The Direct FTE Hourly Rate is $115 per hour (rounded down to the

nearest whole dollar). This rate is calculated by dividing $307.4 million by the number of direct FTEs (1530.2 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A–76, "Performance of Commercial Activities." This section would be revised to indicate that the professional staff-hour rate for FY 1992 through 1995 would be published as a Notice in the **Federal Register** during the first quarter of each fiscal year.

TABLE III.—FY 1991 BUDGET AUTHORITY BY MAJOR CATEGORY

[Dollars in millions]

Salaries and benefits	$213.8
Administrative support	74.6
Travel	12.4
Total nonprogram support obligations	300.8
Program Support	144.5
Total budget authority	445.3
Less program support (direct program)	137.9
Budget Allocated to Direct FTE	307.4

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1991 budgeted costs and to more competetely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule will be based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) cost expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1991 rate shown in § 170.20.

Section 170.21, Category J, Special Projects, is being revised to (1) eliminate the ceiling of $50,000 for topical report reviews and (2) provide for the recovery of preapplication/licensing activities. The NRC proposes that fees for these reviews be based on full-cost recovery. Again, this action is being proposed to recover the full cost of the NRC of all identifiable regulatory services an applicant or licensee receives.

Footnote 2 of § 170.21 is revised to provide that for those applications currently on file and pending completion, the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984, January 30, 1989 and July 2, 1990 rules, as appropriate. With respect to topical report applications currently on file and which are still pending completion of the review, for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the cost incurred after any applicable ceiling was reached through the effective date of this rule will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions or supplements to a topical report on or after the effective date of this rule will be assessed at the rate established by § 170.20. Footnote 5 has been removed since the ceiling for topical report reviews is being eliminated.

In § 170.21, a new Category K, import and export licenses, is being added to recover those costs that are expended on applications filed with the Commission on or after the effective date of the final rule for issuing import or export licenses for production and utilization facilities and components for production and utilization facilities that are subject to NRC import and export regulations of part 110.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section are also modified to reflect the FY 1991 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. The NRC proposes that those flat fees, which are based on the average time to review an application or conduct an inspection, will be increased by 25 percent across the board to reflect the increase in the professional hourly rate from $92 per hour in FY 1990 to $115 per hour in FY 1991. The increase would be applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D and 10.B, and would be assessed for applications filed or inspections conducted on or after the effective date of the final rule.

For example, the NRC proposes that an industrial radiography licensee (Category 3.0.) pay revised license and inspection fees as follows.

Type of fees	Current fees	Proosed increase (percent)	Proposed FY 1991 fees
Application	$2,400	25	$3,000
Renewal	1,400	25	1,800
Amendment	390	25	490
Routine inspection	920	25	1,200
Non-routine inspection	2,000	25	2,500

Most of this increase is due to the fact that certain overhead and G&A costs were previously excluded in developing the professional hourly rate and now have been included in the rate to recover approximately 100 percent of the NRC's budget authority for FY 1991. For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services) the proposed revised hourly rate of $115, as shown in § 170.20, will apply to those professional staff hours expended on or after the effective date of this rule.

New inspection fees are proposed for fee categories 9A through 9D. The NRC has conducted a pilot inspection program of manufacturers and initial distributors of sealed sources and devices containing a sealed source. The NRC plans to continue this inspection program. To recover the costs related to these inspections, fees for all routine and nonroutine inspections conducted on or after the effective date of the final rule will be assessed on a per-inspection basis. The fees assessed for both routine and nonroutine inspections will be based on the full cost of conducting the inspection (professional staff hours and any contractual services costs expended) and will be billed quarterly in accordance with § 170.12(g). Fees for routine inspections of these manufacturers and distributors are estimated to range from $2,000 to $3,000 on the basis of information gathered on some of the previous inspections. The inspection fees would be payable upon notification by the Commission. Fees for inspection costs would include preparation time, time on the site, and documentation time related to the specific inspection.

New inspection fees are also proposed for fee categories 10A and 10B. The NRC has completed Phase One of a pilot program relating to the transportation package-supplier inspection program. On the basis of the results of Phase One, the NRC is proceeding to implement a permanent transportation package-suppliers inspection program. This proposed revision is in response to the fact that NRC is conducting inspections focused on implementation and procedures of part 71 QA programs.

Fees for all routine and nonroutine inspections conducted on or after the effective date of the final rule will be assessed on a per-inspection basis and will be billed quarterly based on the full cost of conducting the inspections. The inspection fees would be payable upon notification by the Commission that they are due. Inspection costs would include preparation time, time on the site, documentation time, and any associated contractual services costs but would exclude the time involved in processing and issuing a notice of violation or a civil penalty. Fees for routine inspections of these programs are estimated to range from $6,000 to $22,000 based on information gathered on some of the previous inspections.

In addition, the NRC will assess inspection fees to those Agreement State licensees who are inspected by the NRC under the reciprocity provisions of 10 CFR 150.20 on or after the effective date of the final rule. The Agreement State licensees will be assessed the inspection fees in § 170.31 for the fee category applicable to the license.

Fee Category 12, Special Projects, would be revised to (1) eliminate the ceiling of $50,000 for topical report reviews and (2) provide for recovery of preapplication/licensing activities. The NRC proposes that fees for these reviews be based on full-cost recovery. The footnotes to § 170.31 will be revised accordingly.

A new category 15, import and export licenses, is being added in order to assess fees for the specific licenses issued by the NRC, pursuant to part 110, covering the import and export of special nuclear material, source material, and byproduct material. Applications for import and export licenses received on or after the effective date of the final rule will become subject to the fees in part 170 including those route approvals that may be required in conjunction with an import license.

On October 16, 1986 (51 FR 36935), the NRC published a final rule in the **Federal Register** relating to 10 CFR part 35. As part of the final rule, the *in vivo* general license contained in § 35.31 was eliminated from the regulations. The Commission indicated that the former general licensees, all of whom were physicians, would receive a specific NRC license covering the clinical procedures authorized by the former general license. Eighty-nine new specific licenses were issued by the NRC in response to the applications received from the former general licensees. The Commission granted these specific licensees an exemption from part 170 application and renewal fees under § 170.11(b) as long as the licensee's program was limited to the material uses described in § 35.31. The Commission will continue to honor that exemption from part 170 fees. However, these licensees will now become subject to the new annual fees of part 171 (Category 7C) in that they will be expected to pay their share of the generic regulatory costs in order for the Commission to meet the statutory mandate of 100 percent recovery of its budget authority for FY 1991. Accordingly, these licensees will be billed annual fees in accordance with § 171.16 of the proposed regulations.

Part 171

Section 171.1 Purpose

This section is revised to include persons holding licenses to operate test and research reactors, facility and materials licenses, Certificates of Compliance, sealed source and device registrations, and approvals for QA programs who will be assessed an annual fee in addition to those persons licensed to operate a power reactor. These entities would include those Federal Government agencies that hold specific NRC licenses, approvals, or certificates.

Section 171.3 Scope

The scope of part 171 is being expanded from any person holding a part 50 operating power ractor license, to any person holding a part 50 operating license, or a materials license, a holder of a Certificate of Compliance, a holder of a sealed source and device registration, or a holder of a Quality Assurance Program approval as defined in this part. A Federal Government agency that holds any of these specific licenses, approvals, or certificates is also included within the scope of part 171.

Section 171.5 Definitions

The definitions of "Byproduct Material," "Certificate Holder," "Government Agency," "Materials License," "Quality Assurance Program Approval," "Registration Holder," "Research Reactor," "Source Material," "Special Nuclear Materia," and "Testing Facility" have been added because these facilities and materials licensees, and holders of certificates, registrations, and approvals will now become subject to the appropriate annual fees in this part.

The definition of "Budget Authority" is replacing the definition of "Budgeted obligations" to clarify that the fees are based on the budget authority or the appropriation granted to the NRC for the FY by the Congress. The definition of "Overhead Costs" is being revised to clarify that organizations previously excluded from fees are being included because the Commission views these budgeted costs as support for all of its regulatory services provided to applicants, licensees, and certificate and registration holders. These costs must be recovered in accordance with Public Law 101–508.

Section 171.11 Exemptions

The criteria for considering exemption requests from the annual fee for operating reactors will be continued. With respect to requests for exemption from the materials annual fees, the Commission proposes to set a high threshold for eligibility for any requested exemption. It is the Commission's expectation that exemptions will be rarely granted. To be considered for exemption, the licensee must provide the NRC clear and convincing evidence that the annual fee is not based on a fair and equitable allocation of the NRC costs. Factors that the NRC proposes to consider in reaching a decision on exemptions are: (1) Whether there are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee or class of licensees, (2) whether there is evidence that the generic costs attributable to the class of licensees are not directly or indirectly related to the specific licensee, and (3) any other relevant matter that shows that the annual fee was not based on a fair and equitable allocation of NRC costs.

Section 171.13 Notice

This section would be revised to indicate that the amount of the annual fees for reactor and materials licensees would be published as a Notice in the **Federal Register** during the first quarter of FY 1992 through 1995. This requirement would be consistent with past practice with respect to operating power reactors and with the proposed requirement that the annual fees of less than $100,000 be paid once a year (during the first quarter of the FY). Those annual fees of $100,000 or more would be paid on a quarterly basis.

Section 171.15 Annual Fee: Reactor Operating Licenses

The section heading is revised to indicate that both power reactors and nonpower (test and research) reactors will be assessed annual fees. Section 171.15(a) is revised to include test and research reactors in addition to

operating power reactors, and (b) and (c) are revised to take into consideration the requirement of the Public Law to recover approximately 100 percent of the NRC budget. Paragraph (b) provides the basis for proposing a base annual fee to be assessed to each operating power reactor according to the principle that those licensees requiring the greatest expenditure of NRC resources will pay the greatest annual charge. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1991 budget mission areas and program elements. The resulting total base annual fee amount for power reactor is also shown.

TABEL IV.— ALLOCATION OF NRC FY 1991 BUDGET TO POWER REACTORS BASE FEES [1]

	Program element total		Allocated to power reactor	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Reactor safety and safeguards regulation (RSSR):				
Power reactor applications reviews	$1400	15.9	$1400	15.9
Standard reactor designs reviews	1473	32.6	200	12.2
Other reviews	350	3.7		1.2
Reactor license renewal	1408	14.7	1408	14.7
Reactor performance evaluation	718	33.6	718	33.6
Evaluation of licensee performance	700	33.7	700	33.7
Reactor accident management	1000	11.3	1000	11.3
Human performance evaluation	650	3.2	650	3.2
Reactor operator examinations	6250	51.8	6010	48.8
Resident inspectors		190.7		190.7
Region-based inspections	5708	279.5	5708	274.3
Specialized inspections	3117	65.6	3117	65.6
Project management		133.4		133.4
Safety evaluation of licensing actions	9191	127.7	9191	127.7
Regulatory improvements	335	17.8	335	17.8
RSSR mission area total			$30,437	984.1
Nuclear safety research (NSR):				
Integrity of reactor components	27230	21.5	27230	21.5
Prevent damage to reactor cores	21675	32.0	21675	32.0
Reactor containment performance	17330	12.0	17330	12.0
Generic and USIs	3180	28.1	3180	28.1
Standard and advanced reactors	1825	6.0	1825	6.0
Fuel cycle/transportation/safeguards	1025	4.0	631	2.0
Developing and improving regulations	5065	15.0	5065	15.0
Severe accident implementation	2669	10.0	2669	10.0
Radiation protection/health effects	4600	11.0	3450	8.3
NSR mission area total			$83,055	134.9
Nuclear material and low level waste safety and safeguards regulation:				
Threat and event assessment/international safeguards	430	12.8	430	8.3
Decommissioning	1200	14.4	100	4.2
NMLLWSSR mission area total			$530	12.5
Special and independent reviews, investigations, and enforcement:				
Diagnostic evaluations	350	7.0	350	7.0
Incident investigations	50	3.0	50	3.0
NRC incident response	2200	27.0	2200	27.0
Operational data analysis	1973	25.0	1873	23.0
Performance indicators	980	4.0	980	4.0
Operational data collection/dissemination	2147	5.0	2147	5.0
SIRIE mission area total			7600	69.0
Total			121,622	1,200.5

Total base fee amount allocated to power reactors—[2] $362,800,000
Less estimated Part 170 power reactor fees— −71,900,000
Part 171—Base fees for operating power reactors—290,900,000

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactor for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees to be assessed for FY 1991 are the amounts shown in Table V below for each nuclear power operting license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR Large Dry Containment	$2,626,000
2. Beaver Valley 2	do	2,626,000
3. Braidwood 1	do	2,626,000
4. Braidwood 2	do	2,626,000
5. Bryon 1	do	2,626,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
6. Bryon 2	do	2,626,000
7. Callaway 1	do	2,626,000
8. Comanche Peak 1	do	2,626,000
9. Diablo Canyon 1	do	2,612,000
10. Diablo Canyon 2	do	2,612,000
11. Farley 1	do	2,626,000
12. Farley 2	do	2,626,000
13. Ginna	do	2,626,000
14. Haddam Neck	do	2,626,000
15. Harris 1	do	2,626,000
16. Indian Point 2	do	2,626,000
17. Indian Point 3	do	2,626,000
18. Kewaunee	do	2,626,000
19. Millstone 3	do	2,626,000
20. North Anna 1	do	2,626,000
21. North Anna 2	do	2,626,000
22. Point Beach 1	do	2,626,000
23. Point Beach 2	do	2,626,000
24. Prairie Island 1	do	2,626,000
25. Prairie Island 2	do	2,626,000
26. Robinson 2	do	2,626,000
27. Salem 1	do	2,626,000
28. Salem 2	do	2,626,000
29. San Onofre 1	do	2,612,000
30. Seabrook 1	do	2,626,000
31. South Texas 1	do	2,626,000
32. South Texas 2	do	2,626,000
33. Summer 1	do	2,626,000
34. Surry 1	do	2,626,000
35. Surry 2	do	2,626,000
36. Trojan	do	2,626,000
37. Turkey Point 3	do	2,626,000
38. Turkey Point 4	do	2,626,000
39. Vogtle 1	do	2,626,000
40. Vogtle 2	do	2,626,000
41. Wolf Creek 1	do	2,626,000
42. Zion 1	do	2,626,000
43. Zion 2	do	2,626,000
44. Catawba 1	PWR—Ice Condenser	2,611,000
45. Catawba 2	do	2,611,000
46. Cook 1	do	2,611,000
47. Cook 2	do	2,611,000
48. McGuire 1	do	2,611,000
49. McGuire 2	do	2,611,000
50. Sequoyah 1	do	2,611,000
51. Sequoyah 2	do	2,611,000
Combustion engineering:		
1. Arkansas 2	PWR Large Dry Containment	2,611,000
2. Calvert Cliffs 1	do	2,611,000
3. Calvert Cliffs 2	do	2,611,000
4. Ft. Calhoun 1	do	2,611,000
5. Maine Yankee	do	2,611,000
6. Millstone 2	do	2,611,000
7. Pallisades	do	2,611,000
8. Palo Verde 1	do	2,597,000
9. Palo Verde 2	do	2,597,000
10. Palo Verde 3	do	2,597,000
11. San Onofre 2	do	2,597,000
12. San Onofre 3	do	2,597,000
13. St. Lucie 1	do	2,611,000
14. St. Lucie 2	do	2,611,000
15. Waterford 3	do	2,611,000
Babcock & Wilcox:		
1. Arkansas 1	do	2,611,000
2. Crystal River 3	do	2,611,000
3. Davis Besse 1	do	2,611,000
4. Oconee 1	do	2,611,000
5. Oconee 2	do	2,611,000
6. Oconee 3	do	2,611,000
7. Rancho Seco	do	2,597,000
8. Three Mile Island 1	do	2,611,000
General Electric:		
1. Browns Ferry 1	Mark I	2,600,000
2. Browns Ferry 2	do	2,600,000
3. Browns Ferry 3	do	2,600,000
4. Brunswick 1	do	2,600,000
5. Brunswick 2	do	2,600,000
6. Clinton 1	Mark III	2,825,000
7. Cooper	Mark I	2,600,000
8. Dresden 2	do	2,600,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
9. Dresden 3	do	2,600,000
10. Duane Arnold	do	2,600,000
11. Fermi 2	do	2,600,000
12. Fitzpatrick	do	2,600,000
13. Grand Gulf 1	Mark III	2,825,000
14. Hatch 1	Mark I	2,600,000
15. Hatch 2	do	2,600,000
16. Hope Creek 1	do	2,600,000
17. LaSalle 1	Mark II	2,600,000
18. LaSalle 2	do	2,614,000
19. Limerick 1	do	2,614,000
20. Limerick 2	do	2,614,000
21. Millstone 1	Mark I	2,614,000
22. Monticello	do	2,600,000
23. Nine Mile Point 1	do	2,600,000
24. Nine Mile Point 2	Mark II	2,614,000
25. Oyster Creek	Mark I	2,600,000
26. Peach Bottom 2	do	2,626,000
27. Peach Bottom 3	do	2,626,000
28. Perry 1	Mark III	2,825,000
29. Pilgram	Mark I	2,600,000
30. Quad Cities 1	do	2,600,000
31. Quad Cities 2	do	2,600,000
32. River Bend 1	Mark III	2,825,000
33. Shoreham	Mark II	2,614,000
34. Susquehanna 1	do	2,614,000
35. Susquehanna 2	do	2,614,000
36. Vermont Yankee	Mark I	2,600,000
37. Washington Nuclear 2	Mark II	2,600,000
Other Reactors:		
1. Three Mile Island	B & W PWR-Dry Contain	2,611,000
2. Big Rock Point	GE Dry Containment	2,600,000
3. Yankee Rowe	Westhinghouse PWR Dry Containment	2,626,000
4. Ft. St. Vrain	High Temperature Gas Cooled	2,116,000

The "Other Reactors" listed in Table V have not been included in the fee base because historically they have been granted either full or partial exemptions from the annual fees. The Commission proposes to grant similar partial exemptions in FY 1991 for the three smaller, older reactors, and grant a full exemption for TMI–2, since the authority to operate TMI–2 was revoked in 1979.

Consistent with past policy and practice, if an applicant receives its operating license during the year, it will pay only a prorated annual fee for that year in accordance with the provisions of § 171.17. Fees will continue to be collected under Part 170 up to the time of issuance of the OL.

Paragraph (c) is being revised to propose an additional charge, which will be added to the base annual fee for each operating power reactor shown in Table V, and to provide the method for calculating the additional charge. This charge will recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors, but nevertheless must be recovered to comply with the requirements of the public law. The Commission has made a policy decision to recover these costs from operating power reactors.

The FY 1991 budgeted costs related to the additional charge and the amount of the charge is calculated as follows:

Category of costs	FY 1991 budgeted costs (dollars in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee (i.e., reviews for DOE/DOD reactor projects, West Valley Demonstration Project, DOE Uranium Mill Tailing Radiation Control Act (UMTRCA) actions; international cooperative safety program and international safeguards activities; 60% of low level waste disposal generic activities; and uranium enrichment activities)	$15.7
2. Activities not assessed Part 170 licensing and inspection fees based on Commission policy (i.e., licensing and inspection of nonprofit educational institutions, and standard reactor design reviews)	7.6
3. Export and import licensing activities (FY 1991 only)	1.3
Total budgeted costs	$24.6

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating power reactors}} = \frac{\$24.6 \text{ million}}{111} = \$222{,}000 \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,626,000 and an additional charge of $222,000 for a total annual fee of $2,848,000 for FY 1991.

A new paragraph (d) is added that shows, in summary form, the amount of the total FY 1991 annual fee, including the added charge, to be assessed for each major type of operating power reactor.

Paragraphs (e) and (f) are added which show the amount of the FY 1991 annual fee for non-power (test and research) reactors and indicate that for FY 1992–1995 the annual fees for operating reactors will be calculated and assessed in accordance with § 171.13 of this section. In FY 1991, $500,000 in costs are attributable to those commercial and Federal government licensees that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors which are not exempt from fees results in a proposed annual fee of $50,000 per operating license.

Section 171.16 Annual fees: Material licenses, Holder of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Federal agencies licensed by the NRC.

Paragraphs (a), (b), (c), and (d) are being proposed to establish annual fees for materials licensees including Federal agencies licensed by the NRC. Paragraph (a) indicates those persons who would be subject to the annual fees. Paragraph (b) provides the basis upon which the annual fees will be determined. Paragraph (c) is a listing of the proposed annual fees to be assessed. These fees are necessary to recover the FY 1991 generic costs totalling $46.0 million applicable to fuel facilities, uranium recovery facilities, holders of transportation certificates and QA program approvals, and material licenses, including holders of sealed source and device registrations.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and material users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing and inspection. For transportation, the costs are those budgeted for transportation research, licensing and inspection. Likewise the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing and inspection.

TABLE VI.—ALLOCATION OF NRC FY 1991 BUDGET TO FUEL FACILITY BASE FEES[1]

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program $,K	FTE
Nuclear safety research:				
Fuel cycle/transportation/safeguards	$1025	4.0	$50	0.5
Rad. Protection/Health Effects	4600	2.0	101	0.3
NSA mission area total			$151	0.8
Nuclear material and low level waste safety and safeguards regulation:				
Fuel facilities/spent fuel	$2730	39.1	$1390	31.2
Event evaluation		16.8		3.4
Safeguards licensing/inspection	775	21.2	655	16.8
Decomissioning	1200	14.4	220	2.0
NMLLWSSR mission area total			$2,265	53.4
Total			$2,416	54.2

Total base fee amount allocated to fuel facilities—[2]$13.300,000
Less part 170—fuel facility fees— —2.700,000
Part 171—Base fees for fuel facilities—$10.600,000

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1991 BUDGET TO MATERIAL USERS BASE FEES[1]

	Total		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
Nuclear safety research mission area:				
Radiation protection/health effects	$4600	11.0	$1049	2.5
Nuclear material and low level waste safety and safeguards regulation:				
Licensing inspection of materials users	2172	105.3	2154	104.4
Event Evaluation		16.8		13.4
Nuclear material and low level waste safety and safeguards regulation:				
Decommissioning	1200	14.4	880	7.0
NMLLWSSR mission area total	$3372	136.5	$3034	124.8
Special and Independent Reviews, Investigations, and Enforcement:				
Operational Data Analysis (PE)	$1973	25	$100	2.0
Total			$4,183	129.3

TABLE VII.—ALLOCATION OF FY 1991 BUDGET TO MATERIAL USERS BASE FEES[1]—Continued

	Total		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
Base amount allocated to materials users ($,M)—[2]$ – 30.200,000				
Less part 170—Material users fees— —3.000,000				
Part 171—Base fees for material users—$27.200,000				

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's $10.6 million in total costs to the individual fuel facilities is based primarily on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Since the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC generic safeguards costs (e.g., material control and accountability) are attributable to these facilities. In addition, the size of the facility can be used to help determine the amount of NRC generic costs attributable to a facility. For example, because of the higher safety and safeguards significance of events at large facilities, more NRC effort is expended evaluating such events.

Using this approach, the proposed base annual fee for each facility is shown below.

	Annual fee (dollars in millions)		
	Safeguards	Safety	Total
High enriched fuel:			
Nuclear fuel services	$1.1	$1.2	$2.3
Babcock and Wilcox	1.1	1.2	2.3
Subtotal	2.2	2.4	4.6
Low enriched fuel:			
Advanced nuclear fuels	0.1	.6	.7
Babcock and Wilcox	.1	.2	.3
General Electric	.2	1.1	1.3
Westinghouse	.2	1.1	1.3
Combustion Engineering (Hematite)	.1	.6	.7
Combustion Engineering (Windsor)	.1	.2	.3
Subtotal	.8	3.8	4.6
UF_6 conversion:			
Allied Signal Corp	.1	.6	.7
Sequoyah Fuels Corp	.1	.6	.7
Subtotal	.2	1.2	1.4
Total	3.2	7.4	10.6

The allocation of the costs attributable to uranium recovery is also based on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. It is estimated that 60% of the $1.9 million for uranium recovery is attributable to uranium mills in operation, standby, or with reclamation under review, and in-situ leach facilities (Class I facilities). The remaining 40% would be allocated to the other uranium recovery facilities (e.g. uranium mills in decommissioning and reclamation, R&D, in-situ leach projects, secndary recovery operations and heap-leach operations). The resulting annual fees for each class of licensee are:

Class I facilities, $77,000.
Other facilities, $51,000.

For spent fuel storage licensees, the $1.5 million was uniformly applied to each license for receipt and storage of spent fuel at the Independent Spent Fuel Storage Installation (ISFSI) and holders of spent fuel storage cask Certificates of Compliance. This results in a proposed annual fee of $187,500.

To equitably and fairly allocate the $27.2 million attributable to the approximately 8,000 diverse material users, the annual fee was based on the Part 170 new application and routine inspection fees. Since the application and inspection fees are indicative of the complexity of the license, this approach provides a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also considered the inspection frequency, since the inspeciton frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary the annual fee for each cateogry of license is developed as follows:

Annual Fee=(Application Fee + Inspection Fee/Inspection Priority) x constant + (Unique Category Costs)

The constant is the multiple necessary to recover $27.2 million and is 2.4 for FY 1991. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1991, unique costs of $2.4 millon were identified for the medical improvement program which is attributable to medical licensees.

For the transportation class of licensees, there are two subclasses, Certificate of Compliance holders and Quality Assurance (QA) plan approval holders. To determine the annual fee for each licensee, the $4.8 million

attributable to transportation was then allocated to the subclasses (approximately 75% to Certificate of Compliance holders and the remainder to QA plan approval holders). The costs for holders of Certificates of Compliance were allocated between spent fuel, HLW, and plutonimum air packages and all other packages, based upon the proportion of staff resources devoted to the two categories of certificate holders. For example, more resources are devoted to the more complex casks for spent fuel, high level waste and plutonium air transport. The fee for QA programs is based on the costs asociated with the approved QA plan and the generic costs associated with inspecting fabricators who hold approved QA plans.

The amount or range of the proposed base annual fees for all material licenees is summarized as follows:

Materials Licensess, Proposed Base Annual Fee Ranges

Category of license	Proposed annual fees
Part 70—High enriched fuel	$2.3 million.
Part 70—Low enriched fuel	$300,000 to $1.3 million.
Part 40—UF_6 conversion	$700,000.
Part 30—Byproduct Material	$300 to $10,900.[1]
Part 71—Transportation of Raidoactive Material.	$500 to $71,500.
Part 72—Independent Storage of Spent Nuclear Fuel.	$187,500.

[1] Does not consider the annual fee for a few "master" materials licenses of broad-scope issued to Federal agencies which is $200,000.

If a person holds more than one license, certificate, registration, or approval, the annual fee will be the cumulative total of annual fees applicable to the license, certificates, registrations or approvals held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. Licensees paying annual fees under Category 1.A. (1) are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the same license. Federal agencies licensed by the NRC will pay the annual fee for the particular fee category(ies) applicable to the license, certificate, registration or approval, except for those Federal agencies to which the NRC has granted a "Master" materials license (broad-scope license covering multiple activities performed at multiple locations), in which case, the annual fee for fee Category 16 would be applicable.

Paragraph (d) would establish an additional charge which will be added to the base annual fees shown in paragraph (c) of the proposed rule. The additional charge will recover approximately 40 percent of the NRC budgeted costs of $9.8 million relating to LLW disposal generic activities because 40 percent of the LLW is generated by these licensees. Although these NRC LLW disposal regulatory activities are not directly attributable to materials licensees, or certificate or registration holders, or approvals, the costs nevertheless must be recovered in order to comply with the requirements of the public law. The Commission has made a policy decision to recover approximately 40 percent of these LLW costs from materials licensees, and certificate, registration, or approval holders. The FY 1991 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

Category of costs	FY 1991 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., 40% of LLW disposal generic activities.	$3.8

Of the $3.8 million budgeted costs shown above for LLW activities, 50 percent of the amount ($1.9 million) would be divided by the number of fuel facilities included in part 171 (10 facilities), which would equal $190,000 per fuel facility. The remaining 50 percent ($1.9 million) divided by the total number of material licensees in categories that generate low level waste (3,322 licensees) equals $570 per materials licensee. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the surcharge are in fee categories 1.A.(2), 1.B, 1.D, 2.A, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 5.B, 6.A, 7.B, 7.C, and 16.

On the basis of this calculation, a fuel facility, a high enriched fuel fabrication licensee, for example, would pay a base annual fee of $2,300,000 and an additional charge of $190,000 for LLW activities. A medical center with a broad-scope program would pay a base annual fee of $8,500 and an additional charge of $570, for a total annual fee of $9,070 for FY 1991.

Section 171.17 Proration

This section is being revised to indicate that only the annual fees for operating power reactors that may be issued a license during the FY will be prorated depending on when the license is issued. The annual fee for all other licenses, certificates and registrations, and QA program approvals issued during the year will not be prorated. Annual fees for these licenses, certificates and registrations, and QA program approvals will be assessed only for those licenses and approvals in effect on October 1 each fiscal year. For FY 1991, those licenses, certificates, and registrations, and QA program approvals in effect on the effective date of the final rule will be assessed an annual fee. Licenses, certificates, registrations, and approvals issued during FY 1992, for example, will be assessed an annual fee in the subsequent FY. For materials licensees, this system will reduce the NRC's administrative burden of tracking the numerous licenses, certificates, registrations, and approvals issued during the FY.

Section 171.19 Payment

In this section, it is proposed that, for FY 1992 through 1995, annual fees of less than $100,000 be paid once a year during the first quarter of the FY as billed by the NRC because of the large number of licensees and the relatively small amount of these bills. Annual fees of $100,000 or more will be billed and paid quarterly. In addition, a provision is being added to indicate that where specific payment instructions are provided on the bills, payments should be made accordingly. The NRC intends to request payment by electronic fund transfer of those bills in excess of $5,000. This method is consistent with the existing provision for the current fee schedules in part 170.

The NRC anticipates that the first, second, and third quarterly payments for FY 1991 will have been made by operating power reactor licensees before a final rule is promulgated. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. Depending on the implementation schedule of the final rule, the NRC intends to adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee. For those fuel cycle licensees, material licensees, and holders of certificates and registrations, and QA program approvals that will become subject to the proposed annual fees for the first time in FY 1991, the NRC anticipates that a bill for the full amount of the annual fee will be sent to the licensee, or certificate, registration, or approval holder during August 1991. Fees would be due 30 days thereafter.

Section 171.25 Collection of Interest, Penalties, and Administrative Costs

This section would be amended to include all annual fees assessed in accordance with proposed §§ 171.15 and 171.16.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for these proposed regulations.

VI. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to part 170, this proposed rule was developed pursuant to title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), cert. denied 444 U.S. 1102 (1980). The Court held that (1) the NRC had the authority to recover the full cost of providing services to identifiable beneficiaries; (2) the NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations; (3) the NRC could charge for costs incurred in conducting environmental reviews required by NEPA; (4) the NRC properly included in the fee schedule the costs of uncontested hearings and of administrative and technical support services; (5) the NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and (6) the NRC's fees were not arbitrary or capricious.

With respect to part 171, Public Law 101–239 required the NRC to establish annual fees for regulatory services provided to its applicants and licensees that, when added to other amounts collected, equaled 33 percent of the Commission's costs of providing those services for FY 1991. On August 17, 1990, the NRC published in the **Federal Register** (55 FR 33789) the annual fees for FY 1991 based on the Public Law. On November 5, 1990, the Congress amended the Public Law. For FYs 1991 through 1995, Public Law 101–508 requires that approximately 100 percent of the NRC budget authority be recovered. To accomplish this statutory requirement, the NRC, in accordance with 10 CFR 171.13, is publishing the proposed amount of the FY 1991 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals and Federal agencies. This public law and the Conference Report specifically state that (1) the annual fees will be based on the Commission's FY 1991 budget of $465 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the Commission's high level waste program; (2) the annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and (3) the annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. Therefore, when developing the proposed revised annual fees for operating power reactors the Commission continues to consider the various reactor vendors, the types of containment, and the location of the reactor. The annual fees for fuel cycle licensees, materials licensees, certificates, registrations and approvals and for licenses issued to Federal agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986, was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), cert. denied, 109 S. Ct. 1952 (1989).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in Florida Power and Light, all of the lawsuits were withdrawn.

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budger Reconciliation Act of 1990 to recover 100 percent of its budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the new schedules of fees that are necessary to implement this Congressional mandate. The proposed rule would result in an increase in the fees charged to all licensees and certificate holders, including those licensees who are classified as small entities under the Regulatory Flexibility Act. Each NRC licensee who may be characterized as a small licensee is licensed under the NRC's materials licensing program. An NRC licensee is classified as a small entity if—

1. The licensee's annual receipts are less than $3.5 million; or

2. The licensee is a private practice physician whose annual receipts are less than $1 million; or

3. The licensee is a State or publicly supported institution supported by jurisdictions of less than 50,000 population; or

4. The licensee is an educational institution that is not State or publicly supported and has 500 or fewer employees.

The NRC recognizes that the required increase in the fees that must be charged to its licensees, including those that are classified as small entities, may have a significant economic impact on

these licensees. To the extent possible within the statutory mandate, the NRC has attempted to apportion the increased charges among its licensees in a fair and equitable manner. For its materials licensees, including those that would qualify as a small entity, the annual fee would be apportioned based on the relative amount that would be charged to review a new materials license and to conduct a routine inspection for each class of materials licensee. This apportionment is based on the premise that the amount of effort required to process a new license or conduct an inspection is indicative of the generic effort and other effort not billed under part 170 that is required to regulate that class of licensees. For a detailed explanation of the NRC's proposed cost allocation methodology, see the preamble to this proposed rule.

The NRC is seeking comment from any small entity that would be subject to this proposed regulation, who can demonstrate that, because of their size, the proposed regulation would have a disproportionate economic impact on them. The NRC is particularly seeking comment on (1) how the proposed regulations would affect each class of licensee and (2) how the regulations may be structured to further minimize the economic impact on the licensee, but still meet the statutory mandate of Public Law 101–508. Those small entities wishing to offer comments on how the regulations could be modified to take into account their differing needs should specifically discuss the following items:

(a) The licensee's size, in terms of annual receipts, supporting population, or number of employees, appropriate to the factor under which the licensee qualifies as a small entity.

(b) The commentor should indicate how the proposed regulation would result in a significantly disproportionate economic burden on the licensee as opposed to the economic burden on a larger licensee or different class of licensees. To the extent possible, the commentor should provide relevant economic data necessary to support the commentor's contention. The economic data should indicate, at a minimum, the licensee's gross annual receipts, the amount that would be assessed under the proposed fee schedules, and the percentage by which the licensee's net receipts would be reduced.

(c) How the proposed regulations could be modified to account for the licensee's differing needs or capabilities, both as an individual or as a specific class of licensees.

(d) How the proposed regulation, as modified, would more closely equalize the impact of the increased charges as opposed to providing special advantages to any individual or group.

(e) The benefits that would accrue or the detriments that would be avoided if the regulations were modified as suggested by the licensee.

(f) How the proposed regulation, as modified, would still meet the statutory mandate of Public Law 101–508.

(g) On what class of licensees the costs not recovered should be imposed upon.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 71

Criminal penalties, Hazardous materials—transportaiton, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material, Holders of certificates, Registrations, Approvals, Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 71, 170, and 171.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

1. The authority citation for part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 71.3, 71.43, 71.45, 71.55, 71.63 (a) and (b), 71.83, 71.85, 71.87, 71.89, and 71.97 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 71.5(b), 71.6a, 71.91, 71.93, 71.95, and 71.101(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 71.0, paragraph (c) is revised to read as follows:

§ 71.0 Purpose and scope.

* * * * *

(c) The regulations in this part apply to any certificate holder and to any licensee authorized by specific license issued by the Commission to receive, possess, use or transfer licensed material if the licensee or certificate holder delivers that material to a common carrier for transport or transports the material outside the confines of the licensee's or certificate holder's facility, plant, or other authorized place of use. No provision of this part authorizes possession of licensed material.

* * * * *

3. In § 71.4, add the definition of "certificate holders" to read as follows:

§ 71.4 Definitions.

* * * * *

Certificate holder means a person who holds a certificate of compliance, or other package approval issued by the Commission.

* * * * *

4. In § 71.93, paragraph (a) is revised to read as follows:

§ 71.93 Inspection and tests.

(a) The licensee or certificate holder shall permit the Commission at all reasonable times to inspect the licensed material, packaging, premises, and facilities in which the licensed material or packaging is used, provided, constructed, fabricated, tested, stored, or shipped.

* * * * *

5. The heading for 10 CFR part 170 is revised to read as follows:

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

6. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C.

2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

7. In § 170.2, paragraphs (o) and (p) are added to read as follows:

§ 170.2 Scope.

* * * * *

(o) Requesting preapplication/licensing review assistance from the NRC by filing preliminary analyses, documents or reports.

(p) An applicant for a holder of a specific import or export license issued pursuant to part 110 of this chapter.

8. In § 170.3, add the definitions "Act", and "Agreement State" to read as follows:

§ 170.3 Definitions.

* * * * *

Act means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto;

* * * * *

Agreement State means any State with which the Commission or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the Act.

"Nonagreement State" means any other State.

* * * * *

§ 170.11 [Amended]

9. In § 170.11, paragraphs (a)(1), (a)(2), (a)(8), (a)(9), and (a)(11) are removed and reserved.

10. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1991 budget is $115 per hour. For FY 1992 through 1995, the professional staff-hour rate would be published as a Notice in the **Federal Register** during the first quarter of each fiscal year.

11. Section 170.21 is amended by removing footnote 5, revising the section heading, the introductory text to the section, Category J and footnote 2 and by adding a new Category K to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and types of fees	Fees [1,2]
* * * * *	
J. Special projects:	
Approvals and preapplication/licensing activities.	Full Cost.
Inspections	Full Cost.
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only for components for production and utilization facilities issued pursuant to 10 CFR part 110.	
Application—new license	Full Cost.
Renewal	Full Cost.
Amendment	Full Cost.

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of this chapter nor for amendments resulting specifically from such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100% of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operating power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, and July 2, 1990, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established in $170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

12. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$500.
Renewal	$500.
Amendment	$380.
Inspections:	
Routine	$460.
Nonroutine	$1,300.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$690.
Renewal	$690.
Amendment	$230.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
Inspections:	
Routine	$690.
Nonroutine	$800.
E. Source material:	
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses for possession and use of source material for shielding:	
Application—New license	$110.
Renewal	$110.
Amendment	$110.
Inspections:	
Routine	$290.
Nonroutine	$350.
C. All other source material licenses:	
Application—New license	$790.
Renewal	$750.
Amendment	$450.
Inspections:	
Routine	$800.
Nonroutine	$1,500.
3. Byproduct material:	
A. License of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,300.
Renewal	$1,400.
Amendment	$230.
Inspections: [5]	
Routine	$2,100.
Nonroutine	$2,100.
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,300.
Renewal	$2,300.
Amendment	$550.
Inspections: [5]	
Routine	$1,000.
Nonroutine	$2,000.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,400.
Renewal	$1,400.
Amendment	$460.
Inspections:	
Routine	$1,400.
Nonroutine	$1,900.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,100.
Renewal	$500.
Amendment	$310.
Inspections:	
Routine	$800.
Nonroutine	$1,200.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$500.
Renewal	$480.
Amendment	$250.
Inspections:	
Routine	$460.
Nonroutine	$690.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$1,200.
Renewal	$400.
Amendment	$350.
Inspections:	
Routine	$580.
Nonroutine	$1,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$4,600.
Renewal	$1,900.
Amendment	$460.
Inspections:	
Routine	$1,000.
Nonroutine	$1,4000.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,100.
Renewal	$1,100.
Amendment	$250.
Inspections:	
Routine	$690.
Nonroutine	$690.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,600.
Renewal	$1,200.
Amendment	$350.
Inspections:	
Routine	$460.
Nonroutine	$690.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$2,500.
Renewal	$580.
Amendment	$390.
Inspections:	
Routine	$690.
Nonroutine	$690.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,900.
Renewal	$940.
Amendment	$290.
Inspections:	
Routine	$690.
Nonroutine	$690.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$2,300.
Renewal	$2,000.
Amendment	$500.
Inspections:	
Routine	$930.
Nonroutine	$1,200.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,100.
Renewal	$1,100.
Amendment	$630.
Inspections:	
Routine	$800.
Nonroutine	$930.
N. Licenses that authorize services for other licenses, except (1) licenses that authorize calibration and/or leak testing services only are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	$1,400.
Renewal	$800.
Amendment	$400.
Inspections:	
Routine	$690.
Nonroutine	$690.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,000.
Renewal	$1,800.
Amendment	$490.
Inspections:	
Routine	$1,200.
Nonroutine	$2,500.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$500.
Renewal	$500.
Amendment	$380.
Inspections:	
Routine	$1,200.
Nonroutine	$1,200.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of commercial disposal by land disposal by the licenses; or license authorizing contingency storage of low level radioactive waste or licenses for treatment or disposal, packaging of residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,800.
Renewal	$1,900.
Amendment	$200.
Inspections:	
Routine	$2,100.
Nonroutine	$1,600.
C. Licenses specifically authorizing the receipt of prepackaged waste product material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,900.
Renewal	$930.
Amendment	$230.
Inspections:	
Routine	$1,600.
Nonroutine	$2,100.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,400.
Renewal	$2,000.
Amendment	$540.
Inspections:	
Routine	$800.
Nonroutine	$800.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
Inspections:	
Routine	$690.
Nonroutine	$1,000.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$1,400.
Renewal	$1,400.
Amendment	$350.
Inspections:	
Routine	$1,200.
Nonroutine	$1,900.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,400.
Renewal	$790.
Amendment	$430.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
Inspections:	
Routine	$1,200.
Nonroutine	$1,900.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,300.
Renewal	$2,000.
Amendment	$360.
Inspections:	
Routine	$1,600.
Nonroutine	$1,800.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$710.
Renewal	$1,000.
Amendment	$430.
Inspections:	
Routine	$1,000.
Nonroutine	$1,500.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$580.
Renewal	$400.
Amendment	$310.
Inspections:	
Routine	$690.
Nonroutine	$690.
9. Device, product or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,300.
Amendment—each device	$1,200.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices:	
Application—each device	$1,600.
Amendment—each device	$580.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each device	$690.
Amendment—each device	$230.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel:	
Application—each device	$350.
Amendment—each device	$110.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
10. Transportation of radioactive material:	
A. Evaluation of casks, package, and shipping containers:	
Application, Renewal, Amendment.	Full Cost.
Inspections	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	$230.
Renewal	$230.
Amendment	$230.
Inspections	
Routine	Full Cost.
Nonroutine	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects:	
Approvals and preapplication/licensing activities.	Full Cost.
Inspections	Full Cost.
13.	
A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions and supplements.	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance:	
Routine	Full Cost
Nonroutine	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter:	
Routine	Full Cost.
Nonroutine	Full Cost.
[4] 14. Byproduct, source of special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR parts 30, 40, 70 and 72:	
Application, Renewal, Amendment.	Full Cost.
Inspection:	
Routine	Full Cost.
Nonroutine	Full Cost.
15. Import and Export licenses:	
Licenses for the import and export only of special nuclear material, source material, and byproduct material issued pursuant to 10 CFR part 110.	
Application-new license	Full Cost.
Renewal	Full Cost.
Amendment	Full Cost.

[1] *Types of fees*—Separate charges as shown in the schedule will be assessed for preapplication reviews and applications for new licneses and approval, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals or applications to reinstate expired licenses and approvals not subject to fees assessed at full cost must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) *Licenses/approval/review fees*—Fees for applications for new licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A, 14, and 15) are due upon notification by the Commission in accordance with the § 170.12 (b), (e) and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A, 14 and 15) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment fees*—Applications for amendments to licenses and approvals, except those subject to fees assessed at full cost, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approval subject to full costs (fee Categories 1A,1B, 2A, 4A, 5B, 10A, 11, 12, 13A, 14 and 15), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 to which any applicable contractual support service costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR part 2.204 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, and July 2, 1990, rules, as appropriate. For those applications currently on file for which review costs have reached an application fee ceiling established by the June 20, 1984, and July 2, 1990 rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revisions or supplement to a topical report completed or under review from January 30, 1989, to the effective date of this rule will not be billed to the applicant. Any professional hours expended on or after the effective date of this rule will be assessed at the rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A and 1B are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielding radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

13. The heading for 10 CFR part 171 is revised to read as follows:

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND FEDERAL AGENCIES LICENSED BY NRC

14. The authority citation for part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388 (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841).

15. Section 171.1 is revised to read as follows:

§ 171.1 Purpose.

The regulations in this part set out the annual fees charged to persons who hold licenses, Certificates of Compliance, holders of sealed source and device registrations, and holders of quality assurance program approvals issued by the United States Nuclear Regulatory Commission, including licenses or certificates issued to a Federal agency.

16. Section 171.3 is revised to read as follows:

§ 171.3 Scope.

The regulations in this part apply to any person holding an operating license for a power reactor, test reactor or research reactor issued under part 50 of this chapter. These regulations also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source and device registration, a quality assurance program approval, and to a Federal Government agency as defined in this part.

17. In § 171.5, remove the definition "Budgeted Obligations" and add the definitions of "Budget Authority," "Byproduct Material," "Certificate Holder," "Government Agency," "Materials License," "Quality Assurance Program Approvals," "Registration Holder," "Research Reactor," "Source Material," "Special Nuclear Material," and "Testing Facility," and revise the definition of "Overhead Costs" to read as follows:

§ 171.5 Definitions.

* * * * *

Budget Authority means the authority, in the form of appropriations, provided by law and becoming available during the year, to enter into obligations that will result in immediate or future outlays involving Federal government funds. The appropriation is an authorization by an Act of Congress that permits the NRC to incur obligations and to make payments out of the Treasury for specified purposes. Fees assessed pursuant to Public Law 101–508 are based on NRC budget authority.

Byproduct material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

Certificate Holder means a person who holds a certificate of compliance, or other package approval issued by the Commission.

* * * * *

Government agency means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the government.

Materials license means a byproduct material license issued pursuant to part 30 of this chapter, a source material license issued pursuant to part 40 of this chapter, or a special nuclear material license issued pursuant to Part 70 of this chapter or a license for the storage of spent fuel issued pursuant to Part 72 of this chapter.

* * * * *

Overhead and General and Administrative costs means:

(1) The Government benefits for each employee such as leave and holidays, retirement and disability benefits, health and life insurance costs, and social security costs;

(2) Travel costs;

(3) Direct overhead, e.g., supervision and support staff that directly support the NRC safety mission areas (administrative support costs, e.g., rental of space, equipment, telecommunications and supplies); and

(4) Indirect costs that would include, but not be limited to, NRC central policy direction, legal and executive management services for the Commission and special and independent reviews, investigations, and enforcement and appraisal of NRC programs and operations.

Some of the organizations included are the Commissioners, Secretary, Executive Director for Operations, General Counsel, Government and Public Affairs (except for international safety and safeguards programs), Inspector General, Investigations, Enforcement, Small and Disadvantaged Business Utilization and Civil Rights, the Technical Training Center, Advisory Committees on Nuclear Waste and Reactor Safeguards, and the Atomic Safety and Licensing Board Panel and Appeal Panel. The Commission views these budgeted costs as support for all its regulatory services provided to applicants, licensees, and certificate holders, and these costs must be recovered pursuant to Public Law 101–508.

* * * * *

Quality Assurance Program Approval is the document issued by the NRC to approve the quality assurance program submitted to the NRC as meeting the requirements of § 71.101 of this chapter. Activities covered by the quality assurance program may be divided into two major groups: those activities including design, fabrication and use of packaging and those activities for use only of packaging.

Registration Holder as used in the part means any manufacturer or initial distributor of a sealed source or device containing a sealed source that holds a certificate of registration issued by the NRC.

Research reactor means a nuclear reactor licensed by the Commission under the authority of subsection 104c of the Act and pursuant to the provisions of § 50.21(c) of this chapter for operation at a thermal power level of 10 megawatts or less, and which is not a testing facility as defined in this section.

Source material means:

(1) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(2) ores which contain by weight one-twentieth of one percent (0.05%) or more of

(i) Uranium,

(ii) Thorium, or

(iii) Any combination thereof.

Source material does not include special nuclear material.

Special nuclear material means:

(1) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determined to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

Testing facility means a nuclear reactor licensed by the Commission

under the authority of subsection 104c of the Act and pursuant to the provisions of § 50.21(c) of this chapter for operation at:

(1) A thermal power level in excess of 10 megawatts; or

(2) A thermal power level in excess of 1 megawatt, if the reactor is to contain:

(i) A circulating loop through the core in which the applicant proposes to conduct fuel experiments; or

(ii) A liquid fuel loading; or

(iii) An experimental facility in the core in excess of 16 square inches in cross-section.

18. Section 171.11 is revised to read as follows:

§ 171.11 Exemption.

(a) The Commission may, upon application, grant an exemption, in part, from the annual fee required pursuant to this part.

(b) An exemption for reactors under this provision may be granted by the Commission taking into consideration each of the following factors:

(1) Age of the reactor;

(2) Size of the reactor;

(3) Number of customers in rate base;

(4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and

(5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

(c) The Commission may grant a materials licensee an exemption from the annual fee only if it determines that the annual fee is not based on a fair and equitable allocation of the NRC costs. It is the intention of the Commission that such exemptions will be rarely granted. The following factors must be fulfilled as determined by the Commission for an exemption to be granted:

(1) There are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee, or class of licensees;

(2) There is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are not directly or indirectly related to the specific licensee; and

(3) Any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of NRC costs.

19. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials license, including a Federal agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a Notice in the **Federal Register** during the first quarter of FY 1992 through 1995 unless otherwise specified by the Commission. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. If the annual fee is based on the amount appropriated by the Congress for the prior fiscal year and Congress, during the fiscal year, enacts an appropriation different from that used in setting the fees, the annual fees will be revised to reflect the budget authority for that fiscal year. Notice of this revision will be published in the **Federal Register.**

20. Section 171.15 is revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted from part 170 licensing and inspection fees.

(b) A base annual fee will be established for each operating power reactor. The calculated fee is based on the sum of NRC budgeted costs for each FY for the following:

(1) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170.

(2) Research activities directly related to the regulation of power reactors.

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 20 of this chapter, or operating the Incident Response Center.

The base FY 1991 annual fees for each operating power reactor subject to fees under this section and due before September 30, 1991 are shown in paragraph (d) of this section.

(c)(1) An additional charge will be established and added to the base annual fee for each operating power reactor. The amount of the surcharge shall be the sum of NRC budgeted costs for each FY for the following:

(i) Activities not attributable to an existing NRC licensee or class of licensees; i.e., reviews submitted by other Federal agencies (e.g., DOE) that do not result in a license or are not associated with a license; international cooperative safety program and international safeguards activities; approximately 60 percent of the low level waste disposal generic activities; uranium enrichment generic activities; and

(ii) Activities not currently assessed Part 170 licensing and inspection fees that are based on existing Commission policy, i.e., reviews and inspections conducted of non-profit educational institutions, and reviews of standard reactor design applications.

(2) The FY 1991 surcharge to be added to each operating power reactor is $222,000. This amount is calculated by dividing the total cost for these activities ($24.6 million) by the number of operating power reactors (111).

(d) The FY 1991 Part 171 annual fees for operating power reactors and due by September 30, 1991 are proposed as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY [1]

[Fees in Millions]

Reactor vendor	Number	Base fee	Added charge	Proposed fee	Estimated collections
Babcock/Wilcox	8	$2.611	$.222	$2.833	$22.7
Combustion Eng.	15	2.611	.222	2.833	42.5
GE Mark I	24	2.600	.222	2.822	67.7
GE Mark II	9	2.614	.222	2.836	25.5
GE Mark III	4	2.825	.222	3.047	12.2
Westinghouse	51	2.626	.222	2.848	145.2
Totals	111				$315.8

[1] Proposed fees shown to be assessed by reactor vendor will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter, except for those reactors exempted from fees under part 170 of this chapter, are as follows:

Research reactor	$50,000
Test reactor	$50,000

(f) For FY 1992 through 1995 annual fees for operating reactors will be calculated and assessed in accordance with § 171.13.

21. Section 171.16 is added to reach as follows:

§ 171.16 Annual Fees: Materials Licenses, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Federal Agencies Licensed by the NRC.

(a) Person(s) who conduct activities licensed under

(1) 10 CFR part 30 for byproduct material,

(2) 10 CFR part 40 for source material, and

(3) 10 CFR part 70 for special nuclear material, 10 CFR part 71 for packaging and transportation of radioactive material and 10 CFR part 72 for independent storage of spent nuclear fuel and high level waste shall pay an annual fee for each license, certificate, approval or registration the person(s) holds on the date the annual fee is due.

(b) The basis for the annual fee is the sum of NRC budgeted costs for each FY for those generic and other research activities directly related to the regulation of materials licenses as defined in this part and other safety, environmental, and safeguards activities for materials licenses (except costs for licensing and inspection activities directly associated with plant-specific licensing and inspections that are recovered under part 170 of this chapter).

(c) The FY 1991 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section and due 30 days after the initial billing, are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR FEDERAL AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	License No.	Docket No.	Annual fees [1] [2] [3]
1. Special nuclear material:			
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.			
High Enriched Fuel:			
Nuclear Fuell Services	SNM-124	70-143	$2,300,000
Babcock and Wilcox	SNM-42	70-27	2,300,000
Low Enriched Fuel:			
General Electric Company	SNM-1097	I70-1113	$1,300,000
Westinghouse Electric Co	SNM-1107	70-1151	1,300,000
Advanced Nuclear Fuels	SNM-1227	70-1257	700,000
Combustion Engineering (Hematite)	SNM-33	70-36	700,000
B&W Fuel Company	SNM-1168	70-1201	300,000
Combustion Engineering (Windsor)	SNM-1067	70-1100	300,000
A. (2) All other special nuclear materials licenses not included in 1.A.(a) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form.			$100,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI).			187,500
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.			1,100
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2).			1,600
2. Source material:			
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride.			700,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in the standby mode.			
Class I facilities [4]			77,000
Other facilities			51,000
B. Licenses for possession and use of source material for shielding			300
C. All other source material licenses1			2,000
3. Byproduct material:			
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.			6,400
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.			3,100
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material.			7,400
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceutical, generators, reagent kits and/or sources or devices not involving processing of byproduct material.			2,700
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).			1,300
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.			2,600
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes.			10,900

H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	4,400
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation of persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,200
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	5,100
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	4,100
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	4,900
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	2,600
N. Licenses that authorize services for other licenses, except (1) licenses that authorize calibration and/or leak testing services only are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	3,000
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations	8,000
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,400
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of commercial disposal by land disposal by the licensee; or licenses authorizing contingency storage of low level radioactive waste or licenses for treatment of disposal, packaging of residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 57,800
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	9,400
C. Licenses specifically authorizing the receipt of prepackaged waste product material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	5,200
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material or well logging, well surveys, and tracer studies other than field flooding tracer studies	7,000
B. Licenses for possession and use of byproduct material for field flooding tracer studies	10,200
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	3,400
7 Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices	9,700
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices	8,500
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices	3,400
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,300
9. Device product or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,300
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices	3,100
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,300
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel	670
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for casks, packages, and shipping containers.	
Spent Fuel, HLW and plutonium air packages	71,500
Other Casks	11,000
B. Approvals issued of part 71 quality assurance programs.	
Users and Fabricators	9,100
Users	500
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. Spent fuel storage cask Certificate of Compliance	187,500
14. Byproduct, source of special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR Parts 30, 40, 70 and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Master materials licenses of broad scope issued to Federal agencies	200,000

[1] Amendments based on applications filed after the due date of the annual fee that change the scope of a licensee's program or that cancel a license will not result in any refund or increase in the annual fee or any portion thereof. The annual fee will be waived where the license is terminated prior to the effective date of the annual fee, and the amount of the annual fee will be increased or reduced where an amendment or revision is issued to increase or decrease the scope prior to the effective date of the annual fee.

If a person holds more than one license, certificate, registration or approval, the annual fee will be the cumulative total of the annual fees applicable to the licenses, certificates, registrations or approvals held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, or 70 of this chapter of the Commission's regulations.

[3] For FYs 1992 through 1995, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 of this part and this section and will be published as a Notice in the **Federal Register**.

[4] A Class I license includes mills in operation or standby, mills with reclamation plans under review and commercial in-situ leach facilities.

[5] Fee is for a license to dispose of special nuclear material. Once NRC issues an LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for such licenses.
[6] Annual fee for standardized spent fuel facilities and special reviews, such as topical reports, are not assessed an annual fee since the generic costs of regulating such activities are primarily attributable to the users of the designs and topical reports.
[7] Licensees in this category are not assessed an annual fee since they are charged an annual fee in other categories while they are operating.
[8] No annual fee is charged since it is not practical to develop an equitable and fair fee to cover the relatively short life of the license.

d)(1) An additional charge will be established and added to the base annual fee for each fuel facility. The amount of the surcharge shall be 20 percent of the NRC budgeted costs ($3.8 million) for low-level waste disposal generic activities that are not attributable to an existing NRC licensee or certificate or approval holder. The FY 1991 surcharge to be added to each license is $190,000. The amount is calculated by dividing the total cost for this activity ($1.9 million) by the number of licensees (10).

(2) An additional charge will be established and added to the base annual fee for each materials licenses in Categories 1.A(2), 1.D, 2.A, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 5.B, 6.A, 7.B, 7.C and 16. The amount of the surcharge shall be 20 percent of the NRC budgeted costs ($3.8 million) for low-level waste disposal generic activities that are not attributable to an existing NRC license or certificate, registration or approval holder. The FY 1991 surcharge to be added to each license in the above categories (except for category 16) is $570. The surcharge for category 16 is $8,000 since the broad-scope military licenses cover many uses of material and therefore generate more waste. The amount is calculated by dividing the total cost for this activity ($1.9 million less $16,000 allocated to catregory 16) by the numberr of licenses, certificate and approval holders, 3,322.

22. Section 171.17 is revised to read as follows:

§ 171.17 Proration.

The annual fee for a power reactor license that is subject to fees under this part that is granted a license to operate after October 1 of a FY shall be prorated on the basis of the number of days remaining in that FY. Thereafter, the full fee would be due and payable each subsequent FY. Licenses revoked, suspended, or for which the licensee has requested amendment to permanently withdraw operating authority during the FY will not result in any refund of the annual fee or any portion thereof. Any holder of a materials license, a Certificate of Compliance or a holder of a sealed source and device registration or approval of a QA program issued after October 1 of FYs 1992 through 1995 will be assessed an annual fee in the subsequent fiscal year.

23. Section 171.19 is revised to read as follows:

§ 17.19 Payment.

(a) For FY 1991, the Commission will adjust the fourth quarterly bill for operating power reactors to recover the full amount of the revised annual fee. All other licensees, or holders of a certificate, registration and approval of QA program will receive a bill for the full amount of the annual fee during August 1991. Fees would be due 30 days from the date of the invoice.

(b) For FYs 1992 through 1995, annual fees in the amount of $100,000 or more and described in the Federal Register notice pursuant to § 171.13, shall be paid in quarterly installments of 25 percent. A quarterly installment is due on October 1, January 1, April 1 and July 1 of each FY. Annual fees of less than $100,000 shall be paid once a year during the first quarter of the FY as billed by the Commission. Where specific payment instructions are provided on the bills to licensees, payment must be made accordingly, e.g., bills of $5,000 or more will normally indicate payment by electronic fund transfer.

24. § 171.25 is revised to read as follows:

§ 171.25 Collection, interest, penalties, and administrative costs.

All annual fees in §§ 171.15 and 171.16 will be collected pursuant to the procedures of 10 CFR part 15. Interest, penalties and administrative costs for late payments will be assessed in accordance with 10 CFR part 15, 4 CFR part 102, and other relevant regulations of the United States Government, as appropriate. In the event a quarterly installment is not made by the appropriate due date specified in § 171.19, the full fee becomes due and payable, with interest, penalties, and administrative costs of collection calculated from the date that quarterly installment was due.

Dated at Rockville, Maryland this 2nd day of April, 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91-8161 Filed 4-11-91; 8:45 am]

BILLING CODE 7590-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 5, 15 and 33

Domestic Exchange-Traded Commodity Options; Requirements for Option Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") permitted the reintroduction in the United States of exchange-traded commodity options in several phases beginning in 1981. In 1986 and 1987 respectively, the Commission terminated the pilot nature of its programs for the reintroduction of exchange-traded commodity options on nonagricultural futures contracts and on physical commodities and agricultural futures contracts. The Commission recently has reviewed the requirements for designation of options on futures contracts which largely have been unchanged from the time option trading was made permanent, and in some instances, from the inception of the pilot option program. Based on its review, the Commission is now proposing either to remove or to amend several of those requirements.

In particular, the Commission is proposing to remove the following rules: Rule 33.4(a)(5)(iii), which requires a specified volume of trading in the underlying futures contract prior to designation; Rule 5.4, which establishes a delisting criterion for the trading of options on low-volume futures contracts, Rule 33.4(b)(1)(iv), which requires that exchanges adopt rules establishing a period of time before the expiration of an option during which no new option strike prices can be added; and Rule 33.4(g), which requires exchanges to provide a comprehensive list of occupational categories of commercial users of the commodity underlying the option. In addition, the Commission is proposing to revise Rule 33.4(d)(1), which requires exchanges to justify expiration dates of less than 10 days before first notice day or last trading day of the future, whichever comes first and to redesignated it as Rule 33.4(b)(2). In addition, the Commission is proposing to amend Rule 15.00(b)(2), to raise to 50 contracts the minimum

reportable level requiring no exchange justification.

DATES: Comments must be received by June 11, 1991.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Reference should be made to "Option Contract Market Designation."

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–3201 or 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission has submitted these amended rules and their associated information collection requirements to the Office of Management and Budget.

While these amended rules have no increased information collection burden associated with them, they are a part of a group of rules which has a public reporting burden which is estimated to average 50.35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this estimate of no increased burden to Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, and to the Office of Management and Budget, Paperwork Reduction Project (3038), NEOB, Washington, DC 20503.

B. History of Option Trading in the United States

In enacting the Commodity Exchange Act in 1936, Congress, concerned with the history of excessive price movements and severe disruptions in the futures markets attributed to speculative trading in options, prohibited option trading in all of those commodities then regulated under the Act.[1] Massive fraud in the offer and sale of options in commodities not so enumerated in the Act occurred in the late 1960s and early 1970s. Consequently, in creating the new Commodity Futures Trading Commission, Congress granted it broad power to regulate transactions in options in the previously unregulated commodities.[2] Following a period when options were banned because of abuse,[3] the Congress, in 1982, authorized the Commission to implement a pilot program for the trading of options on futures contracts on designated contract markets. See, section 206(2) of the Futures Trading Act of 1982, 96 Stat. 2294, 2301. It was against this background that the Commission promulgated its rules governing a three-year pilot program for the trading of options on domestic exchanges. Many of the rules that were promulgated in connection with options trading were in response to this prior history of abuses. Others were promulgated in light of the absence of any recent trading experience with exchange-traded option products, or to assess the success of the pilot program itself.

C. Designation Requirements for Options

Among the requirements for designation of option contracts was a limitation on the number of options contracts permitted on each exchange. 17 CFR 33.4 (1982). In addition, as a condition for designation of an option, the underlying futures contract was required to meet a quantitative test of liquidity. 17 CFR 33.4(a)(5)(iii)(1982). Moreover, option contract markets were required to provide rules establishing a period before the expiration of an option during which no new strike prices may be introduced, 17 CFR 33.4(b)(1)(iv); to justify an expiration date on the option if less than 10 business days before the earlier of the last trading day or the first notice day of the underlying futures contract, 17 CFR 33.4(d)(1); and to provide a list of occupational or business categories of commercial users of the commodity underlying the relevant futures contract, 17 CFR 33.4(g)(1982).

Many of the rules were promulgated in light of the lack of previous trading history in options. Among them, the liquidity requirement of Rule 33.4(a)(5)(iii) was based, in part, upon a prospective concern whether in the absence of such a numeric test, "the underlying cash and futures market * * * [would] be sufficiently liquid to prevent option trading from disrupting those markets." 46 FR 54500, 54505 (November 3, 1981). In addition, requiring exchanges to justify the expiration of an options contract less than 10 days before first notice date, or the last trading day of the underlying future, also was based on the lack of previous trading history. 17 CFR 33.4(d)(1).

Similarly, Commission Rule 33.4(g) was promulgated in light of the absence of previous trading experience to assist the Commission in determining the appropriate categories of commercial traders for these newly traded instruments. In particular, Commission Rule 33.4(g) requires exchanges, those closest to the markets, to provide, as part of the designation application, a comprehensive list of occupational or business categories of persons which they would consider commercial users of the physical commodity underlying the futures contract on which the option is traded. This categorization was to be used in evaluating the commercial uses of commodity options and thereby, in part, the overall success of the pilot program for options trading.[4]

Subsequently, as a consequence of the ending of the pilot status of the program, some of the designation criteria were modified, and others added. For example, in light of the pilot program's apparent success, the Commission determined to remove the numerical limitations on the number of option contracts which could be traded on any one exchange. In light of the removal of these numeric limitations on the number of contracts for which designation could be sought, the Commission determined to address the liquidity test once again. It noted that

> * * * [b]ased on such trading experience in the pilot program, the 3,000 contract weekly level was found to be the most appropriate to ensure that options are designated only on those relatively active futures markets which would not be adversely affected by option trading. This requirement takes on added importance in light of the Commission's

---

[1] Act of June 15, 1936, Ch. 545, section 5, 49 Stat. 1484.

[2] Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93–463, section 402(c), 886 Stat. 1412–13 (codified at 7 U.S.C. 6c(b)).

[3] See, 43 FR 16153, (April 17, 1978). This suspension was codified by the Congress when it enacted the Futures Trading Act of 1978, Pub. L. No. 95–406, section 3, 92 Stat. 867.

[4] In this regard, the Commission noted that the intent of this provision was "* * * to use the information provided by the exchanges to generate a standard coding system for classes of traders which would be considered commercial. Inasmuch as this information will provide a basis for determining commercial participation in the option program, the Commission believes that it is important that the exchanges, which will have direct contact with the industry in formulating option contracts * * * provide the Commission with their opinions as to which types of traders should properly be classified as commercial." 46 FR 54513.

determination to remove the current limitation of the number of contracts permitted per exchange. A higher volume level is necessary to ensure that options will be traded only on those contract markets which can best support such a derivative market.

51 FR 17464, 17467–17468 (May 13, 1986).

Accordingly, the Commission determined to raise the threshold volume level of the underlying futures contract for designation of an option on such a future contract from 1,000 contracts per week to the current level of 3,000 contracts per week, reasoning that

* * * an initial volume of 1,000 contracts per week generally may not be adequate to ensure that a trader would be able to exercise an option into a sufficiently liquid market so that the resulting position could be offset without suffering a substantial loss of the option's true economic value.

51 FR at 17467.

Coupled with the increase in the threshold limitation, the Commission adopted an alternative test, also quantitative in nature. The alternative test permitted the introduction of an options on a futures contract with less than a full year's trading history of the underlying futures. However, the Commission noted that

* * * [t]hat is not to say, however, that the Commission will at any time permit the simultaneous designation of a futures contract and option on a futures market with the expectation that the introduction of the two contracts at the same time will assure adequate liquidity. The designation of the derivative option market must be predicated upon a preexisting, liquid, underlying futures market.

51 FR 17468.

In addition, the Commission promulgated a delisting criterion for options, also as a consequence of the now permanent status of trading in options. Once the trading of options was to be made permanent, the Commission determined that a delisting criterion was necessary based upon a rationale similar to that supporting the volume requirements for initial designation. That is, the Commission expected that with permanent status, the volume of trading in various option markets might fluctuate greatly over the years. The Commission noted that such a delisting criterion would establish

* * * the minimum acceptable level below which the individual trader in the underlying futures market may be adversely affected by the existence of a derivative market.

51 FR 17469.

Accordingly, the delisting criterion, Rule 5.4, provided that if volume in the underlying futures contract fell below 1,000 contracts per week for the preceding six month period, no new option expirations could be added. New option expirations could be added, however, once volume in the underlying futures contracts rose to the level of 2,000 contracts per week for a period of three months. The structure of the delisting criterion was premised upon the existence of a higher volume requirement for initial designation. Thus, it was drafted always to relate back to the preceding six-month period.

II. Experience Under the Current Rules and Proposed Amendments

The Commission, beginning in 1987, has granted exemptions from the Rule 33.4(a)(5)(iii) volume requirement for certain proposed options on newly or recently designated futures contracts.[5] In particular, the Commission granted such an exemption for the proposed option on the Australian dollar futures contract traded on the Chicago Mercantile Exchange, which was designated as an option contract market on November 17, 1987. Similar exemptions were granted for options on the 5,000 ounce silver, 100 ounce gold, mortgage-backed, and medium-term Treasury note futures contracts traded on the Chicago Board of Trade. These options contracts were designated in the spring of 1988.

The Commission based its determinations on whether to grant such exemptions from the volume requirement of Rule 33.4(a)(5)(iii) on several factors. These included whether the option's underlying cash market exhibits a high level of liquidity,[6] whether the terms of the underlying futures contract ensure the opportunity for arbitrage and close alignment between the cash and futures markets and whether an accurate and widely disseminated price series exists which is representative of values of the commodity underlying the future.

In all, the Commission has exempted applications for option contract market designations from the initial volume requirement on twelve occasions. These exempted option contracts have exhibited varying degrees of liquidity in the underlying cash market and in the breadth of the dissemination of a price series representative of values in the underlying commodity. Despite the fact that in most instances the exemption was granted on the basis that a liquid and deep cash market permitted easy and effective arbitrage with the underlying futures contract, therefore maintaining close pricing alignment between the futures and cash markets, not all of the futures granted such exemptions can be arbitraged as directly and easily with the associated cash market. Nevertheless, the experience of the Commission has been that no problems have been observed directly related to the volume of trading or lack thereof in the underlying futures at the time of designation, regardless of the particular characteristics of the cash markets or degree of liquidity of the futures markets for any of the option contracts for which exemptions have been approved.

It appears that low volumes in futures contracts are also reflected in low volumes in the related option contracts. Indeed, the experience has been that if there is no trading in the underlying futures contract, the associated optin on the futures contract also is not traded. Nevertheless, low volumes in the underlying futures contracts appear not to create any specific problem in the trading of an option contract.

Based on the above experience, it appears that, generally, options on futures contracts only are traded on liquid futures contracts. However, as the number of exemptions which have been requested over the past several years indicates, exchanges remain interested in attempting to initiate trading in options on new, or otherwise illiquid futures contracts, suggesting that the opportunity to trade both the futures and the option on the futures creates synergy in the trading of both. The Commission has observed no detrimental affects from these efforts, despite their apparent lack of success.

In light of the above, trading history indicates that the prospective concerns of the Commission regarding the potential for disruption of an liquid underlying futures market by the designation of an option contract on that futures have not materialized. Accordingly, the Commission is proposing to remove that requirement.

Along with the volume requirement for initial designation, the Commission promulgated a delisting requirement for those option contracts already trading where the volume in the underlying futures contract fell below specified

---

[5] In these cases the Commission was petitioned to exempt certain applications for designation of options on futures contracts from the volume criteria pursuant to Commission Rule 33.11, 17 CFR 33.11, which provides that: "[t]he Commission may, by, order, upon written request * * * exempt any person * * * from any provisions of this part (33 of the regulations) * * * if it finds, in its discretion, that it would be contrary to the public interest to grant such exemption."

[6] Cash market liquidity facilitates the execution of large transactions, over short periods with small price effects. It is evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads.

levels. As noted above, Commission Rule 5.4 provides that no new option expiration months can be added where volume in the underlying futures contract falls below an average of 1,000 contracts per week for all trading months listed during the preceding six month period. Once delisted, option expirations can be relisted once trading volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a three month period.

Also as noted above, Commission's Rule 5.4's structure reflects the requirement that volumes in the underlying futures contract initially be at a higher level, 3,000 contracts per month, prior to designation. Because Commission Rule 5.4 anticipated that the requisite liquidity would be established in the futures contract before the option would be permitted to be designated, that rule does not contain a grace period before the six-month period for averaging volume commences. Such grace periods are provided in other volume-related rules in order to provide exchanges with an initial period in which to build liquidity before any restriction applies.[7]

Nevertheless, the Commission has granted exemptions from Commission Rule 5.4 approximately half of those instances in which it has granted exemptions from the liquidity requirement for initial designation. Where no such exemption was granted, the exchange would have a period of six months in which to build the requisite liquidity before the delisting provision would apply. In those instances where an exemption from the delisting requirement was granted, the exchange would have a longer period in which to meet the requisite liquidity period. In no event, however, has the Commission granted an exemption from the dormant contact rule, Rule 5.2, and the low volume contract rule, Rule 5.3.[8]

Generally, the Commission has observed no adverse affects from granting such exemptions from Commission Rule 5.4. It appears that the subsequent ability of newly designated instruments to attract the requisite liquidity to comply with these rules is generally established within a relatively short period of time after their beginning to trade. Except where an exchange may have delayed the initial listing of a futures or an option contract subsequent to designation, there are few, if any, cases where a contract market meeting the volume requirements of these rules required longer than six months to build the necessary volume. Generally, the exemptions have been requested, and granted by the Commission, where an exchange anticipated some delay in initially listing such contracts for trading after designation, thus ensuring a sufficient start-up period before the delisting rule became operative.

In light of the Commission's proposed deletion of the initial volume requirement, the delisting requirement must also be reconsidered. Because the initial volume requirement would no longer be in effect, if Rule 5.4 were not modified, virtually every designation would require the Commission to consider whether to grant an exemption from the delisting requirement. As detailed above, the Commission's concern at the outset of option trading, that such trading might have an adverse effect on illiquid futures markets or on the customers in such markets, has not been borne out. Moreover, the actual exemptions which have been granted have not resulted in any adverse effect on an options market, its underlying futures market, or to customers in either of the markets. Accordingly, based upon its experience in granting these exemptions, the Commission has determined to propose the deletion of the options delisting rule.

With respect to expiration of the options contract and the addition of new strike prices, exchanges have justified, and the Commission approved, procedures which were not contemplated when the rules were promulgated. For example, with regard to the requirement of Rule 33.4(d)(1) that exchanges justify an option expiration date of less than ten business days before the earlier of the last trading day or the first notice day of the underlying futures contract, exchanges routinely have demonstrated that a shorter period is acceptable because the related futures contracts generally have sufficient liquidity until the day before first notice day or the last trading day of the future. Moreover, in the case of cash-settled futures, the Commission has approved simultaneous expiration of the option and its underlying futures.

The Commission's experience has been that in light of the book entry of expired options into positions in the underlying futures contracts, and in general, the existence of sufficient liquidity in the futures through the last trading day, expiration of the option can be moved closer to the last trading day without adverse impact. Moreover, the existence of speculative position limits, which include levels appropriate to trading in the spot month and under which options and futures positions often are combined, provides an additional safeguard which would permit the expiration of the option closer in time to the last trading day in the future.[9]

Accordingly, based on this experience, the Commission is proposed to amend Rule 33.4(d)(1) routinely to permit options on futures contracts which are settled through physical delivery to expire at any time prior to the day before first notice day or the last trading day, whichever comes first. Options on futures contracts which are cash-settled would be permitted to expire simultaneously with the underlying futures. However, those contract markets adopting an option expiration date less than ten days from the last trading day would be required, as part of an effective market surveillance program, to have daily large trader reports for the expiring option during the applicable period.

Commission Rule 33.4(b)(1)(iv) requires exchanges to adopt rules which prescribe the period of time before the expiration of an option at which no new strike prices may be introduced. Generally, exchanges provided that no new strike prices could be added during the month in which the options expire. This usually resulted in no new strike prices being added for a two-to-three week period.

Over time, however, and with greater trading experience, exchanges sought to enhance liquidity and hedging opportunities during the final trading days by listing new at-the-money strike prices. The listing of additional strike prices with little time value remaining could pose customer protection issues similar to those raised by the offer of deep-out-of-the-money options. Insofar as the exchanges are required under Commission rule 33.4(c) separately to conduct sales practice audits of member futures commission merchants concerning such practices, the

[7] For example, such grace periods are provided in the dormant and low-volume contract rules (17 CFR 5.2 and 5.3 (1987)). Specifically, under the dormant contract rule, a contract market will not be considered to be dormant for a period of 36 months from the time of designation. This provides a period during which newly designated contract markets are provided with an opportunity to build the required level of volume.

[8] The dormant contract rule, Commission Rule 5.2 17 CFR 5.2, provides that no new additional futures or option expirations may be added where a contract has not traded in the previous six months. As noted above, a three-year grace period is provided for newly designated contracrs or contracts which have begun trading after a hiatus.

[9] In this regard, it should be noted that combined futures/option speculative position limits were developed after the reintroduction of option trading, based upon trading experience.

Commission approved the extended listing of new strike prices.

There have been no particular problems or complaints arising from the listing of new strike prices during the period through the last trading day. Moreover, permitting the listing of additional strike prices near expiration may enhance the option's economic utility by facilitating its use for hedging during this period, particularly in times of high price volatility. Accordingly, the Commission is proposing to remove the requirement that exchanges provide for a period in which no new strike prices may be added.

In addition, the Commission is proposing to remove the requirement of Commission rule 33.4(g) that exchanges provide a comprehensive list of occupational or business categories of commercial users of the commodity underlying the option. As noted above, that requirement served a useful role in the initial stages of the reintroduction of option trading. However, the lists of occupational category are now well-established, and the Commission has sufficient familiarity with them to make appropriate modifications without requiring exchanges to provide such lists routinely with each designation application. In this regard, however, the Commission stresses that it will continue to use these codes in future special calls. Accordingly, the Commission will continue to update the list of codes, as appropriate. In this regard, the Commission has provided notice of the list of codes by periodic publication in the **Federal Register**. In light of the continued use of these codes by the Commission for any subsequent special calls, they should continue to be assigned to all existing and new accounts.

The Commission is also proposing to amend Commission Rule 15.00(b)(2). That rule provides that the reportable level for option contracts is twenty-five contracts, except as otherwise approved by the Commission. Of course, the Commission has approved higher reporting levels, as appropriate, based upon the request of the applicable contract market. Nevertheless, the Commission notes that, in light of its surveillance experience, a higher minimum reporting level—fifty contracts—is now appropriate. By adopting this higher minimum level, the Commission hopes to reduce the paperwork burden on exchanges associated with routine requests for a higher minimum level. The reporting burden on traders also will be reduced.

III. Related Matters.

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "boards of trade or contract markets" and "large traders" are not "small entities" for puposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules modify the requirements under which boards of trade may be designated as contract markets in options and propose to revise the minimum—reporting levels at which designated contract markets must collect information regarding the trading positions of large option traders. Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reasons, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comments from any firms or other persons which believe that the promulgation of these proposed rule amendments might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (Act) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission has submitted these amended rules and their associated information collection requirements to the Office of Management and Budget.

While these amended rules have no increased burden, the group of rules of which this is a part has the following burden:

Average Burden Hours per Response: 50.34.

Number of Respondents: 10,727,182.

Frequency of Response: Monthly.

Persons wishing to comment on the estimated paperwork burden associated with these amended rules should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254-9735.

List of Subjects

17 CFR Part 5

Commodity exchange, Commodity exchange designation procedures, Commodity futures, Commodity options, Contract markets, Contract market designation fees, Dormant Contract markets, Low-volume contract markets, Low volume periods, Reporting requirement, Trading month.

17 CFR Part 15

Persons required to report, Quantities fixed for reporting.

17 CFR Part 33

Commodity exchange, Commodity exchange designation procedures, Commodity exchange rules, Commodity futures, Commodity options.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4c(b), 4c(c), 4c(d), 4g, 4i, 5, 5a, 6 and 8a thereof 7 U.S.C. 2. 4, 6c(a), 6c(b), 6c(d), 6g, 6i, 7, 7a, 8 and 12a, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

1. The authority citation for part 5 continues to read as follows:

Authority: 7 U.S.C. 6c, 7, 7a, 8 and 12a, unless otherwise noted.

§ 5.4 [Removed]

2. Section 5.4 is proposed to be removed.

PART 15—REPORTS—GENERAL PROVISIONS

3. The authority citation for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c (a)—(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19, and 21; 5 U.S.C. 552 and 552(b).

4. Section 15.00 is proposed to be amended by revising the section heading and paragraph (b)(2) to read as follows:

§ 15.00 Definitions of terms used in parts 15 to 21 of this chapter.

* * * * *

(b) * * *

(2) For purposes of reports regarding commodity options—

(i) For reports specified in part 16 and in § 17.01 of this chapter, any open contract portion on any one contract market in the put option or separately in the call option of a specified option expiration date, which is carried on the books of any one futures commission merchant or foreign broker or which is held by a member of a contract market, and which, at the close of the market on any business day, equals or exceeds 50 options on futures contracts or 50 options on physicals, except as otherwise approved by the Commission.

(ii) For reports specified in §§ 18.00 and 18.04 of this chapter, and for recordkeeping requirements specified in § 18.05 of this chapter, 50 or more open options on futures contracts or 50 or more open options on physicals on any one contract market in a put option or separately in a call option of a specified option expiration date.

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE—TRADED COMMODITY OPTION TRANSACTIONS

5. The authority citation for part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6i, 6m, 6n, 6o, 7, 6a, 6b, 8, 9, 11, 12a, 12c, 13a–1, 13b, 19 and 21 unless otherwise noted.

6. Section 33.4 is proposed to be amended by removing and reserving paragraphs (a)(5)(iii) and (b)(1)(iv), by removing paragraph (g), by removing and reserving paragraph (d)(1) and by adding paragraph (b)(2) to read as follows:

§ 33.4 Designation as a contract market for the trading of commodity options.

* * * * *

(b) * * *

(2) Prescribe an expiration date of the option that is not less than one business day before the earlier of the last trading day or the first notice day of any futures contract on the same or a related commodity; *Provided, however,* That where the underlying futures contract is cash-settled, the option may expire simultaneously with the expiration of the futures contract.

* * * * *

Issued in Washington, DC, this 8th day of April, 1991, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–8588 Filed 4–11–91; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

RIN 3235–AD91

[Release No. IC–18080, S7–7–91]

Amendment to Rule 2a–7 Under the Investment Company Act

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendment to rule 2a–7.

SUMMARY: The Commission is proposing for public comment an amendment to rule 2a–7 under the Investment Company Act of 1940 affecting money market funds. The amendment would exclude tax exempt money market funds from the requirement that the board of directors of a fund approve or ratify the acquisition of any security that is unrated, or is rated by only one rating agency.

DATES: Comments must be received on or before May 9, 1991.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–7–91. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Berman, Special Counsel, or Lawrence B. Stoller, Attorney, (202) 272–2097, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing an amendment to rule 2a–7 [17 CFR 270.2a–7] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("1940 Act") that would exclude tax exempt money market funds ("tax exempt funds") [1] from a requirement that the board of directors of a fund approve or ratify the acquisition of any security that is unrated, or is rated by only one nationally recognized statistical rating organization ("NRSRO").[2] This requirement was included in amendments to rule 2a–7 adopted by the Commission on February 13, 1991 [3] and will become effective on June 1, 1991.

I. Discussion

On February 20, 1991, the Commission published several amendments to rules and forms affecting money market funds, including rule 2a–7 under the 1940 Act.[4] The amendments were designed both to reduce the likelihood that a money market fund will not be able to maintain a stable net asset value, and to increase investor awareness that investing in a money market fund is not without risk.[5]

Rule 2a–7, as amended, contains certain conditions designed to reduce the likelihood that the net asset value of a money market fund determined by the amortized cost method of valuation will deviate materially from its net asset value as determined by the mark-to-market method.[6] One of these conditions limits fund investment to United States dollar-denominated obligation that are determined to present "minimal credit risks" and are "Eligible Securities." [7] "Eligible Securities" are defined as securities rated by at least two NRSROs, or by the only NRSRO that has rated the security, in one of the two highest short-term rating categories, or comparable unrated securities.[8] This limitation is applicable to all money market funds, including tax exempt funds. In the case of securities rated by only one NRSRO or unrated securities, the amendments require the fund's board of directors to either approve securities prior to their purchase or subsequently ratify their purchase.[9] This ratification requirement

[1] Paragraph (a) (17) of rule 2a–7, as amended [17 CFR 270.2a–7(a)(17)], defines "tax exempt fund" as any money market fund that holds itself out as distributing income exempt from regular federal income tax.

[2] The term "nationally recognized statistical rating organization" is used in the Commission's uniform net capital rule [17 CFR 240.15c3–1(c)(2)(vi)(E), (F) and (H)].

[3] Investment Company Act Rel. No. 18005 (Feb. 20, 1991) (56 FR 8113 [Feb. 27, 1991]) ("Release 18005"). The amendments were proposed in Investment Company Act Rel. No. 17589 (July 17, 1990) (55 FR 30239 [July 25, 1990]) ("Release 17589).

[4] Release 18005, *supra* note 3.

[5] *Id.*

[6] Rule 2a–7 exempts money market funds from the general requirement applicable to mutual funds that the value of portfolio securities be marked to market on a daily basis. *See* Release 18005, *supra* note 3, at nn. 2–9 and accompanying text.

[7] Paragraph (c)(3) of rule 2a–7, as amended [17 CFR 270.2a–7(c)(3)].

[8] Paragraph (a)(5) of the rule 2a–7, as amended [17 CFR 270.2a–7(a)(5)]. The term "Requisite NRSROs" is defined in paragraph (a)(13) of rule 2a–7, as amended [17 CFR 270.2a–7(a)(13)].

[9] Paragraph (c)(3) of rule 2a–7, *supra* note 7.

was intended to provide an additional level of review when a fund invests in securities the credit risks of which have been subject to more limited independent analysis.

The Commission expected that for most money market funds, the ratification requirement would be performed relatively infrequently. However, since the publication of the amendments, the Commission has been advised that the ratification requirement would impose a significant burden on tax exempt funds because a larger number of the instruments in which they invest are rated by only one NRSRO. The large number of single-rated tax exempt securities would involve tax exempt fund boards far more extensively in fund management than had been contemplated. In view of the unanticipated effect that this provision would have on tax exempt funds, the Commission is proposing that tax exempt money market funds be excluded from this requirement.[10]

The amendment would exclude single-rated and unrated securities from the ratification requirement. Comment is requested on the extent to which tax exempt funds hold unrated securities and whether a ratification requirement limited to unrated securities would be a significant burden for tax exempt funds.

We wish to emphasize that tax exempt funds are not being exempted from the requirement that the board of directors, or its delegate, determine that portfolio securities have minimal credit risk and that their investments be limited to Eligible Securities.

The requirement that the board of directors approve the acquisition of single-rated or unrated securities would continue to be applicable to taxable money market funds. The board of directors may not delegate this responsibility to the fund's investment adviser.[11] The specific manner in which a fund determines to satisfy the ratification requirement is left to the discretion of each fund, based on the investment objectives and policies of the fund and the securities with respect to which approval or ratification is required.[12] However, approval or ratification requires something beyond the procedures followed when the board is delegating responsibilities, that is, the adoption of guidelines and periodic monitoring of the adviser. While the establishment of guidelines for unrated and single-rated securities may facilitate the approval and ratification process, paragraph (c)(3) requires that the board approve or ratify each investment. In the exercise of its responsibility under this provision the board would have to have available to it at a minimum (i) the name and other pertinent identifying information of each unrated or single-rated security that it is to approve or ratify, and (ii) sufficient credit-related information with respect to the security such that the board could reasonably determine that the investment is appropriate in light of the fund's objectives and policies and the requirement of rule 2a–7 that the security present minimal credit risk. This information could be presented to the board in the form of a summary of the information relied on by the adviser in recommending or purchasing the security and the basis for the adviser's recommendation.

[10] An amendment to correct a typographical error is also being made to paragraph (c)(6)(ii)(C) of rule 2a–7, as amended [17 CFR 270.2a–7(c)(6)(ii)(C)].

[11] Paragraph (e) of Rule 2a–7, as amended [17 CFR 270.2a–7(e)].

[12] In Release 18005, *supra* note 3, at n. 78, the Commission noted that it would not be necessary to convene the board of directors every time the fund acquires such a security. The board of directors could establish an approved list of securities, provided that it periodically makes the requisite credit risk determinations with respect to the securities on the list. In addition, the adviser could acquire a security in accordance with guidelines established by the board, but the board would have to ratify the acquisition at its next meeting.

II. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendment. This analysis summarizes the provisions of rule 2a–7 and states that since the publication of the amendments, the Commission has been advised that the ratification requirement would impose a significant burden on tax exempt funds because a larger number of the instruments they invest in are single-rated securities. The analysis states that in view of this unanticipated effect, the Commission is proposing that tax exempt funds be excluded from this requirement. The analysis states that the objective of the proposed amendment is to relieve tax exempt funds from a requirement that could be a significant burden. A significant number of securities in which tax exempt funds invest are only rated by one NRSRO. Since the portfolios of some tax exempt funds consist of hundreds or even thousands of single-rated securities, which are often bought and sold over short periods of time, the ratification requirement could be impractical or even unworkable. The analysis states that as of March 1, 1991, there were 254 tax exempt funds. Most of these funds rely upon rule 2a–7. Of those money market funds, 59 tax exempt funds met the Commission's definition of small entity found in rule 0–10 of the 1940 Act [17 CFR 270.0–10]. These "small funds" constituted approximately 23 perecent of all tax exempt funds. The analysis states that the proposed amendment would not establish any additional timetables or compliance and reporting requirements for small funds. Rather, the Commission is proposing that certain compliance requirements for all tax exempt funds, including small funds, be simplified. The analysis also states that the Commission does not believe it is appropriate at this time to further simplify the compliance requirements for small funds. Finally, the analysis states that the use of performance rather than design standards was considered by the Commission and that the Commission does not believe that the use of a performance, rather than a design standard, would be consistent with the Commission's statutory mandate or the protection of investors. A copy of the analysis may be obtained by contacting Lawrence B. Stoller, Office of Disclosure and Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

III. Text of Proposed Rule Amendment

For the reasons set out in the preamble, the Commission is proposing to amend chapter II, title 17 of the Code of Federal Regulations as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The general authority citation for part 270 is revised to read as follows:

15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

§§ 270,2a–7, 270.2a 41–1 and 270.12d 3–1 [Amended]

2. The specific authority for §§ 270.2a–7, 270.2a41–1 and 270.12d3–1 is revised to read as follows:

Sections 270.2a–7, 270.2a41–1 and 270.12d3–1 are also issued under 15 U.S.C. 80a–6(c), 80a–8(6), 80a–22, 80a–33 and 80a–37;

* * * * *

3. By revising paragraphs (c)(3) and (c)(6)(ii)(C) of § 270.2a–7 to read as follows:

§ 270.2a-7 Money market funds.

* * * * *

(c) *Share Price Calculations.* * * *

* * * * *

(3) *Portfolio Quality.* The money market fund will limit its portfolio investments, including Puts and repurchase agreements, to those United States dollar-denominated instruments that its board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to the rating assigned to such instruments by a NRSRO) *and* which are at the time of acquisition Eligible Securities. In the case of an Unrated Security (including a demand instrument) other than a Government Security, or a security that is an Eligible Security based on the rating of one NRSRO, unless the fund is a tax exempt fund, the acquisition of each such security by the money market fund must be approved or ratified by the money market fund's board of directors. For purposes of this section:

* * * * *

(6) * * *

(ii) * * *

(C) Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

* * * * *

Dated: April 8, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8652 Filed 4-11-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1 89-149]

Anchorage Grounds; Captain of the Port Providence, R.I. Zone

AGENCY: Coast Guard, Department of Transportation.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to amend the existing anchorage ground regulations in 33 CFR 110.145. The amended regulations will allow the Captain of the Port (COTP) Providence, R.I., to monitor vessel movements and activities within the anchorage grounds as a safety measure for the COTP Providence, R.I., zone ports and waterways.

DATES: Comments must be received on or before May 28, 1991.

ADDRESSES: Comments should be mailed to USCG Marine Safety Office (MSO) Providence, John O. Pastore Federal Building, Providence, R.I., 02903-1790. The comments and other materials referenced in this notice will be available for inspection and copying at MSO Providence, room 217. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Scott Graham, USCG Marine Safety Office Providence, R.I. at (401) 528-5335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 89-149) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned; but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Scott S. Graham, project officer for the Coast Guard Captain of the Port Providence, R.I., and Lt. John B. Gately, project attorney for the First Coast Guard District Legal Office.

Discussion of Regulations

The circumstances considered for this proposal, to add requirements to the existing anchorage ground regulations in 33 CFR 110.145, involve the existence of inherent safety hazards associated with large vessels at anchor in a restricted navigational area. Based upon the close proximity of adjacent vessels at anchor and the fact that some vessels conduct lightering operations when anchored in these areas, safety and environmental hazards for both the port and the vessel are created. This is due to the potential for collision and resulting injury to persons, sinking of vessels or possible oil and chemical spills. With the addition of the below listed requirements, the Coast Guard Captain of the Port Providence, R.I., will be better equipped to monitor, and respond to, situations which may occur involving vessels at anchor. Consultation with, and comments from, vessel agents and masters is sought and will be appreciated. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 of the Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The added requirements are for notification purposes and therefore add a minimal cost, if any, to the shipping industry or other persons involved. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federal Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46; and 33 CFR 1.05(g). Section 110.1(a) and each section listed in 110.1(a) are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.145 is amended by adding new paragraphs (d)(1) (i) through (vi) to read as follows:

§ 110.145 Narragansett Bay, R.I.

* * * * *

(d) * * *

(1) * * *

(i) No vessel may anchor unless it notifies the Coast Guard Captain of the Port Providence, or Coast Guard Station Castle Hill, when it anchors, of the vessel's name, length, draft, cargo and its position in the anchorage.

(ii) Each vessel anchored must notify the Coast Guard Captain of the Port Providence, or Coast Guard Station Castle Hill, when it weighs anchor.

(iii) No vessel may anchor unless it maintains a bridge watch, guards and answers Channel 16 FM, and maintains an accurate position plot.

(iv) If a vessel experiences any condition that may cause the anchor to drag, the vessel must communicate with the Coast Guard Captain of the Port Providence, or Coast Guard Station Castle Hill, on Channel 16 FM. The Coast Guard Captain of the Port Providence must concur with proposed corrective action. If any vessel is so close to another vessel that a collision is probable, each vessel must communicate with the other vessel and the Coast Guard Captain of the Port Providence, or Coast Guard Station Castle Hill, on Channel 16 FM and shall immediately act to eliminate the close proximity situation.

(v) No vessel may anchor unless it maintains the capability to get underway within 30 minutes, except with prior approval of the Coast Guard Captain of the Port Providence.

(vi) Lightering or bunkering operations may not be conducted without the permission of the Coast Guard Captain of the Port Providence. Ligthering of oil and hazardous material cargoes at anchor is restricted to the anchorage area North of the Newport Bridge, South of Gould Island, and West of a line between Gould Island buoy #17 and the West tower of the Newport Bridge.

* * * * *

Dated: March 28, 1991.

R.I. Rybacki,

Rear Admiral, Commander, First Coast Guard District.

[FR Doc. 91-8582 Filed 4-11-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3920-8; Docket No. AM022b DE]

Approval and Promulgation of Air Quality Implementation Plans; Delaware Withdrawal of a Proposed Rulemaking Action Pertaining to an Automobile Surface Coating RACT Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: EPA is withdrawing its previous proposal to approve a State Implementation Plan (SIP) revision submitted by the State of Deleware on December 12, 1989. This revision pertained to the establishment of an alternative reasonably available control technology (RACT) standard for the urethane anti-chip surface coating operation at the Chrysler Corporation automobile assembly plant located in Newark, Delaware (Chrysler—Newark). The proposed rulemaking affected Delaware Regulation No. XXIV, Control of Volatile Organic Compound Emissions, Section 9, Surface Coating Operations and was published on November 10, 1986 (51 FR 40828). On February 19, 1991, Delaware withdrew its December 12, 1985 request to EPA to approve the RACT standard as a revision to the Deleware SIP. The intended effect of today's action is to withdraw the proposed approval of the alternative RACT standard for the automotive urethane anti-chip surface coating used at the Chrysler—Newark plant. This action is being taken under section 110 of the Clean Air Act.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Management Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107 and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597-9337; FTS 597-9337.

SUPPLEMENTARY INFORMATION: On December 12, 1985, Delaware submitted a revision to its State Implementation Plan (SIP) for, among other things, an alternative RACT standard for the uerthane anti-chip coating used at the Chrysler—Newark plant. This automobile assembly plant is located in New Castle County, Delaware which is not meeting the National Ambient Air Quality Standard (NAAQS) for ozone.

On February 19, 1991, Delaware withdrew its request for EPA to approve the alternative RACT standard for the urethane anti-chip coating. Therefore, EPA is withdrawing its November 10, 1986 proposed rulemaking action.

Action

EPA is withdrawing its November 10, 1986 proposed rulemaking pertaining to the approval of an alternative RACT standard for the urethane anti-chip coating used at the Chrysler—Newark plant.

Nothing is this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), the Regional Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action, pertaining to the withdrawal of the proposed rulemaking action for an alternative RACT standard for the urethane anti-chip automotive coating, has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. This waiver period has been extended until April 1991.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Dated: March 29, 1991.

A.R. Morris,

Acting Regional Administrator, Region III.

[FR Doc. 91-8673 Filed 4-11-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 383

[Docket No. R-136]

RIN 2133-AA87

Determination of Fair and Reasonable Guideline Rates for the Carriage of Less-Than-Shipload Lots of Bulk Preference Cargoes Carried on U.S.-Flag Liner Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The regulations at 46 CFR part 383 (The Liner Regulations) specify procedures for the calculation of guideline rates for certain preference cargoes carried in liner vessels. Since the implementation of that rule in 1987, the Maritime Administration (MARAD) has developed a similar regulation for bulk vessels at 46 CFR part 382 (The Bulk Regulations). MARAD's experience in administering these regulations has highlighted the need for amendments to the Liner Regulations to conform to existing provisions in the Bulk Regulations. This will allow for the determination of rates which will more closely reflect the "fair and reasonable" standard and ease the administration of calculating guideline rates. The principal amendment would be that MARAD would use the actual operating cost of each vessel type engaged in the carriage of preference cargoes, rather than using a system of combined average and actual costs, since experience has combined average and actual costs, since experience has indicated that the use of averaged costs has not resulted in more efficient vessel operation, is inequitable to some operators, and presents administrative difficulties.

DATES: Comments on or before May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590, Telephone (202) 366-2323.

SUPPLEMENTARY INFORMATION: The Liner Regulations (46 CFR part 383), effective November 9, 1987, were implemented to govern the calculation of guideline rates for the carriage of bulk preference cargoes, in less-than-shipload lots, on U.S.-flag liner vessels. These regulations represented the best efforts of MARAD and the liner segment of the shipping industry to develop a workable regulation. Subsequent to the development of the Liner Regulations MARAD developed the Bulk Regulations (46 CFR part 382), effective January 1, 1990, using experience gained from operations under the Liner Regulations as well as input from various interested parties.

In comparing the two regulations, MARAD believes that some of the provisions in the Bulk Regulations could be applied to the Liner Regulations, and that such changes would improve the accuracy and speed the actual process of calculating rates under the Liner Regulations. Accordingly, this rulemaking proposes to make conforming changes to the Liner Regulations, as described hereinafter.

Actual Cost

The regulations at 46 CFR part 383 have utilized a system of combined averaged and actual operating costs in calculating guideline rates for the carriage of bulk preference cargoes, in less than shipload lots on liner vessels. MARAD's object in adopting this procedure was to generate an "average" rate and thereby encourage efficiency and economy on the part of participating operators. The results have indicated no noticeable effect on economy or efficiency. The Bulk Regulations utilize actual costs throughout and are proving to be both more accurate and more equitable to participating operators. Accordingly, it is proposed that section 383.3(b) be changed to provide that MARAD shall calculate daily vessel operating costs on the basis of actual vessel operating costs derived from operating cost data from the immediately preceding calendar year.

The Liner Regulations also specify that operating costs shall be reported in the format of Form MA-172, Schedule 301. Included in Schedule 301 is the item "Charter Hire." Since charter hire is dealt with as part of the capital component, where it is included as an allowable cost, it cannot be included as an operating cost item. Accordingly, this proposed amendment would exclude charter hire, as well as fuel costs, from its scope as an element of the daily operating cost component.

Depreciation

The method for determining depreciation is similar under both the Liner Regulations and the Bulk Regulations. However, the Bulk Regulations specify that capital improvements for vessels over 10 years of age will be depreciated over 10 years, while a similar provision is not included in the Liner Regulations. This rulemaking proposes a similar provision based on the longer 25 year economic life of liner vessels. The Liner Regulations also specify depreciation will be made on the owner's actual construction, reconstruction or acquisition cost, while the Bulk Regulations specify that the basis for depreciation is the owner's capitalized cost. Since capitalized cost is a more precise basis for depreciation, it is proposed § 383.2(d)(2)(i) be amended by using capitalized cost as the basis for depreciation. Also, it is proposed that capitalized improvements for liner vessels be depreciated over the remaining economic life of the vessel, except when the vessel is greater than 15 years of age and in these cases 10 years will be utilized.

Interest

The Liner Regulations specify that the owner's actual rate of interest will be used in calculating the capital portion of the guideline rate. In cases where the operator's interest rate is not available, the prevailing title XI interest rate at the time of the vessel's capitalization will be used.

The Bulk Regulations provide that MARAD will select an appropriate interest rate when an actual rate is not available. In addition, the Bulk Regulations also establish that, where variable interest rates are involved, the rate prevailing at the time of the guideline calculation will be used. The Bulk Regulations specify further that where no vessel debt exists, an allowance will be calculated that utilizes a current long term interest rate.

The terms of the Bulk Regulations are both more flexible and specific than those of the Liner Regulations. Accordingly, the calculation contained in § 383.3(d)(2)(i) of the Liner Regulations would be amended to conform to the corresponding provision in § 382.3(b)(2)(i) of the Bulk Regulations.

Return on Working Capital and Rate of Return

The Liner Regulations include an allowance for return on working capital employed in the calculation of the rate. That part of the calculation specifies that the standard for working capital is equivalent to one-half voyage expenses. This concept was based on title XI standards for working capital, which also specify that one-half voyage costs constitutes working capital. However, the title XI concept is on a yearly basis, which included several voyages and numerous shippers for an individual vessel. The result is an averaging effect which tends to smooth out any irregularities in the recovery of voyage costs. Most voyage costs are recovered

during or near the end of a particular voyage.

In the preference cargo trades voyage cost recovery is not as quick as in the commercial trades. Operators frequently wait for extensive periods of time before recovering voyage costs. Since the entire revenue from a voyage usually depends on the carriage of a particular cargo in the preference trades, the Bulk Regulations, as developed, reflected the demonstrated need of the operators for a greater return on working capital in order to offset the costs of tying up their capital for extended periods. Accordingly, the Bulk Regulations allow 100 percent of voyage expenses as an allowance for working capital. In view of the experience gained in regard to working capital employed, MARAD believes that the working capital allowance for liner operators should be increased under the Liner Regulations.

The method for determining the rate of return applied to capital calculations is carried out the same way in both the Liner and Bulk Regulations. However, by the time the Bulk Regulations were developed, experience and operator input had prompted MARAD to shift to the use of a five year moving average to smooth out the effects of wide variation in return experience in the shipping industry. This concept was discussed in the final rule notice of June 7, 1989 (54 FR 49088), but was not included in the regulation text. It is now proposed to amend 46 CFR 383(b)(2)(iii) to place an explicit reference to a five year period in making this calculation.

Per Diem Capital Costs

In order to conform the calculation of the daily capital component of vessel costs in the Liner Regulations with the Bulk Regulations provision, § 383.3(d)(2) would be amended to provide that annual depreciation, interest and return on equity shall be divided by 300 vessel operating days to yield the daily cost factors.

Determination of Voyage Days and Cargo Carried

In order to accommodate the fundamental and inherent differences between between liner and bulk type operations it is proposed that the use of averaging will be retained in the Liner Regulations as the method of determining voyage length and tonnage carried. However, the regulations would be modified in this area to the extent that average voyage length and tons carried on a service will be determined on the basis of all voyages made, and all appropriate vessel types engaged on the service by an operator. Additionally, it is necessary to provide flexibility in order to determine voyage length for newly authorized services. To accomplish this, § 383.3(f) would be amended by the inclusion of the following language, "Appropriate adjustments will be made to existing data in instances where an operator commences operation of a newly authorized service."

General and Administrative Expenses

At the time the Liner Regulations were developed, general experience indicated that an allowance of four percent was adequate to cover general and administrative expenses (including brokerage) on bulk commodities. Later experience has shown that an allowance of 8.5 percent is more appropriate, and that rate was incorporated into the Bulk Regulations. Accordingly, § 383.3(g) of the Liner Regulations would be amended to include a brokerage and overhead rate of 8.5 percent.

While 8.5 percent has proven generally satisfactory for tramp operations, it is recognized that liner operations normally result in higher G&A costs. Also, G&A levels vary among liner operators due to the type of operations, i.e., container, LASH or breakbulk. However, at the present time there is not sufficient empirical evidence to justify increasing the G&A allowance beyond the 8.5 percent currently authorized for bulk operators to the higher levels associated with liner shipping. If any commentor feels that a different allowance for general and administrative expenses is appropriate, such commentor should submit all relevant supporting evidence.

Confidentiality

The Liner Regulations now require any operator submitting material in response to provisions of § 383.2(b) to claim confidentiality of any material it considers to be confidential at the time of submission. Section 383.2(c) then provides that the Secretary of the Maritime Administration will make an initial determination on confidentiality at the time of any request for information under the Freedom of Information Act.

The Bulk Regulations initially assume confidentiality. In the event of a FOIA request, the submitter (operator) is notified and is allowed to comment, and after such comment a determination on release of the information is made. The system used in the Bulk Regulations is more equitable to the operators and is easier for MARAD to administer. It is also less likely that accidental disclosures will occur, since all information is consideration privileged until determined otherwise. Therefore, it is proposed that § 383.2(c) be amended to conform to the corresponding provisions in the bulk Regulations 46 CFR 382.2(e).

Data Submissions

The Bulk Regulations include specific requirements for data submission by the operators and state the consequences of failure to comply. This rulemaking proposes to include similar provisions in § 383.2(a) of the Liner Regulations.

Noncompliance with the data submission requirements could lead to the sponsoring Federal agency withholding approval of a vessel's bid.

The Bulk Regulations at 46 CFR 382.2(c) establish the requirement for voyage reports, including port and cargo costs needed to calculate guideline rates. Similar provisions are needed in 46 CFR part 383. MARAD proposes to add a comparable provision to the Liner Regulations in § 383.3(e).

Scope

In order to harmonize the Liner Regulations with the Bulk Regulations with respect to what are less-than-shipload lots, it is proposed that § 383.1 be amended to define such cargoes as "any cargo utilizing less than 70 percent of a vessel's deadweight tonnage (DWT)," and stating that guideline rates for cargoes which equal or exceed 70 percent of vessel DWT must be calculated under the Bulk Regulations.

Waiver

In order to provide increased operational flexibility it is proposed that a provision for waiver be added to the Liner Regulations in a new § 383.4.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete

with foreign-based enterprises in domestic or export markets. While this rulemaking does not involve any change in important Departmental policies, it is considered significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). It addresses a matter of considerable importance to the United States maritime industry and may be expected to generate significant public interest. MARAD reviewed all actual fixtures made under the current rule during 1990 for the potential impact of this proposed rulemaking. As a result of this review, MARAD estimates freight charges paid by government agencies covered by this rule to increase by less than $100,000 annually. Since the magnitude of the economic impact will not be substantial, further regulatory evaluation is not necessary.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains a reporting requirement that has been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and was approved (OMB Approval Number 2133–0515) on November 29, 1989.

List of Subjects in 46 CFR Part 383

Agricultural commodities, cargo vessels, Government procurement, grant programs—foreign relations, loan programs—foreign relations, water transportation.

MARAD hereby proposes to revise 46 CFR part 383, to read as follows:

PART 383—DETERMINATION OF FAIR AND REASONABLE GUIDELINE RATES FOR THE CARRIAGE OF LESS-THAN-SHIPLOAD LOTS OF BULK PREFERENCE CARGOES CARRIED ON U.S.-FLAG LINER VESSELS

Sec.
383.1 Scope
383.2 Data Submission
383.3 Determination of Fair and Reasonable Rates.
383.4 Waiver.

Authority: Sections 204(b), 901(b), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1241(b)); 46 CFR 1.66.

§ 383.1 Scope.

Part 383 prescribes regulations applying to the waterborne transportation of dry bulk preference cargoes in less than full shiploads on U.S.-flag commercial liner vessels. These regulations contain the method that the Maritime Administration (MARAD) shall use in calculating fair and reasonable rates, and the type of information that shall be submitted by liner operators interested in carrying such preference cargoes. For the purpose of these regulations, "less than full shipload," is defined as any parcel or combination of parcels of dry bulk preference cargo utilizing less than 70 percent of a U.S.-flag commercial liner vessel's physical deadweight cargo capacity. Guideline rates for such cargoes which equal or exceed 70 percent of vessel capacity shall be calculated under 46 CFR part 382.

§ 383.2 Data submission.

(a) *General.* Operators wishing to employ liner vessels in the carriage of liner parcels of dry bulk preference cargoes shall submit information, as provided in paragraph (b) of this section, as applicable, to the Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. The information in paragraph (b)(1) of this section shall be submitted not later than April 30 of each year and updated not less than once every 12 months. The information in paragraphs (b)(2) and (b)(3) of this section shall be submitted initially and thereafter only when changes occur. All submissions shall be certified by the operator as true, accurate and complete and are subject to verification by MARAD. MARAD's calculations of fair and reasonable guideline rates for U.S.-flag vessels shall be performed on the basis of cost data provided by U.S.-flag vessel operators as specified herein. Failure of a vessel operator to submit the required cost data will result in MARAD being unable to construct the guideline rate for any affected vessel, which may result in such vessel not being approved by the sponsoring Federal agency.

(b) *Required Information.*

(1) For each vessel that an operator wishes to be considered for the carriage of preference cargoes, operating cost information shall be submitted by vessel type, in the format prescribed at 46 CFR 232.1, Form MA–172, including cargo carried, operating revenue and expenses (Schedule 301). Such information shall be applicable to the most recently completed calendar year.

(2) Total vessel costs capitalized (list and date capitalized improvements separately) and applicable interest rates for indebtedness shall be submitted for each vessel.

(3) Fuel consumption, by grades of fuel consumed, shall be submitted for each vessel at normal operating speed and while in port in metric tons per day.

(4) An operator who already submits the information in paragraph (b)(1) of this section to MARAD, in conjunction with other MARAD programs, need not submit a duplicate of the information.

(c) *Confidentiality.* MARAD will initially presume that the material submitted in accordance with the requirements of these regulations is privileged or confidential, within the meaning of 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of that data under 5 U.S.C. 552, MARAD will inform the submitter of such request and allow the opportunity to comment. The submitter shall claim confidentiality at that time by memorandum or letter, stating the basis, in detail, for such assertion of exemption to disclosure, including, but not limited to statutory and decisional authorities. Those parts not so claimed will be subject to initial determination by the Freedom of Information Act Officer.

§ 383.3 Determination of fair and reasonable rates.

(a) *Cost components.* MARAD shall calculate fair and reasonable rates for all liner vessels participating in this program. The fair and reasonable rate shall include an operating cost component, a fuel cost component, a capital cost component, and a component for port and cargo handling expenses.

(b) *Operating cost component.*

(1) *General.* MARAD shall calculate a daily operating cost for each vessel based on the actual operating costs of the owner's vessels of the same type. This cost shall be obtained from cost data for the calendar year immediately preceding the current year submitted in accordance with paragraph (b)(1) of this

section. Such data shall be escalated by MARAD to the current year.

(2) *Items included.* The operating cost component shall include all costs relating to vessel operation (net of operating differential subsidy), with the exception of fuel costs and charter hire, and shall include non fuel expense categories as defined by 46 CFR part 232.1, Form MA–172, Schedule 301, Operating Expenses.

(c) *Fuel component.* Fuel costs shall be determined as a separate component for each vessel, based on the vessel's rate of consumption and current fuel prices.

(d) *Capital component.*

(1) *General.* MARAD shall calculate the daily capital component of the fair and reasonable rate for each participating vessel, consisting of vessel depreciation, interest, return on working capital, and return on equity.

(2) *Items included.* The capital component shall include:

(i) *Depreciation.* The owner's capitalized vessel cost, including capitalized improvements, shall be depreciated on a straight-line basis over a 25-year economic life, unless the owner has purchased or reconstructed the vessel when its age was greater than 15 years old. To the extent a vessel is chartered or leased, the operator shall submit the capitalized cost and imputed interest rate (in the event these items are not furnished, they shall be constructed by MARAD). When vessels more than 15 years old are purchased, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 15 years old shall be depreciated over a 10-year period. When vessels more than 15 years old are reconstructed, MARAD will determine the depreciation period. The residual value of the vessel shall be assumed to be 2.5 percent of total capitalized cost.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. It shall be assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost, including capitalized improvements, and that annual principal payments are made in equal installments over the 25-year economic life. If an actual interest rate is not available, MARAD shall select an appropriate interest rate. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the guideline rate shall be used. A current long-term interest rate (the Title XI rate if available) will be used for operators without vessel debt.

(iii) *Return on working capital.* Working capital shall equal the dollar amount necessary to cover 100 percent of the operating and voyage costs of the vessel for the voyage. The rate of return shall be based on an average of the most recent (over a five year period) return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(iv) *Return on equity.* The rate of return on equity shall be determined as in paragraph (d)(2)(iii) of this section. For the purpose of determining equity it shall be assumed that the vessel's constructed net book value less constructed principal outstanding is equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation.

(v) *Voyage component.* The annual depreciation, interest, and return on equity shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital for the voyage to determine the daily capital cost component.

(e) *Port and cargo handling component.*

(1) *General.* MARAD shall calculate an estimate of port and cargo handling costs consisting of a U.S. port and cargo handling element and a foreign element, as applicable. The port and cargo handling cost component shall be based on the most current information available verified by information submitted in accordance with this section, or as otherwise determined by MARAD. Since Government shipper agencies have at times required steamship lines to perform services beyond their usual scope of operation on some shipments, additional services such as bagging at discharge, rail or truck loading, on carriage to inland destinations, and other sundry expenses have been included in the ocean freight rate in the past. In order to provide a fair and reasonable rate guideline, these expenses will be identified separately from the guideline rate and should be reviewed and approved by the sponsoring Government shipper agency. In the event such charges are not approved, the cargo preference requirement must be met by utilizing a U.S.-flag vessel for the ocean transportation, if such a vessel will accept a rate at or below the guideline rate for the ocean transportation only.

(2) *Items included.* Port and cargo handling charges shall include the following, assuming full berth term quotations:

(i) *U.S. port and cargo handling charges.* In this category MARAD shall include domestic port and cargo handling charges for commodity, port of lading, and lot size based on the cargo tender, expressed as a cost per ton.

(ii) *Foreign port and cargo handling charges.* To the extent possible, MARAD shall include in this category all known foreign port and cargo handling charges that would normally be included. These estimates shall be made for commodity, port of discharge, and lot size based on the cargo tender and expressed as a cost per ton.

(3) *Terms.* If the terms of the tender are other than full berth terms to the vessel owner, adjustment to the guideline rate shall be made on an *ad hoc* basis by request to MARAD. This provision shall be interpreted in accordance with Incoterms, as amended, published by the International Chamber of Commerce, Paris, France.

(4) *Voyage reports*—For each parcel carried under the provisions of this part, the following port and cargo handling costs related to the carriage of such parcel shall be provided within 90 days of the termination of the voyage:

(i) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expense, and any other appropriate expense associated with the loading or discharge of the preference cargo.

(ii) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses associated with the loading or discharge of the preference cargo.

(iii) *Extra cargo expenses.* Seperately list expenses or fees for vacuvators and/or cranes, lightening (indicate tons moved and cost per ton), grain-to-grain cleaning of holds and any other appropriate expenses.

(iv) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses.

(f) *Determination of voyage days and cargo carried.* For purposes of determining the vessel operating, fuel, and capital cost components of the fair and reasonable rate, the voyage length and cargo tons shall be based on an average of voyage days and total payable tons carried for all appropriate vessel types and voyages of an operator on the service for which the fair and reasonable rate is being calculated, as determined from data submitted in accordance with § 383.2(b)(1). Appropriate adjustments will be made

to existing data in instances where an operator commences operation of a newly authorized service. The component for port and cargo handling charges shall be based on cargo tender terms.

(g) *Total rate.* The operating cost component, fuel cost component, capital cost component, and port and cargo handling cost component, each expressed at a cost per ton, shall be added together. The sum of the four components, plus an additional 8.5 percent of the sum to account for brokers' commissions and general and administrative expenses, shall yield the guideline rate.

§ 383.4 Waiver.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

By order of the Maritime Administrator.

Dated: April 9, 1991.

James E. Saari,

Secretary.

[FR Doc. 91-8658 Filed 4-11-91; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-15; Notice 3]

RIN 2127-AA57

Vehicle Classification

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates the agency's rulemaking proceeding to establish a new vehicle classification system to be used with the Federal motor vehicle safety standards. The agency has concluded that the case for completing the vehicle classification rulemaking has become less compelling for two reasons. First, NHTSA has either extended, or proposed to extend, nearly all passenger car safety standards to cover most light trucks and multipurpose passenger vehicles (MPVs). The classification of a vehicle is less significant if the same safety standards apply to the vehicle regardless of its classification. Second, after reconsidering this proposed rulemaking in light of the comments that were received, NHTSA has concluded that substantial work would be needed to modify the agency's original proposal on this subject. Given the lesser importance and greater complexity now apparent for the vehicle classification rulemaking, the agency has decided to terminate that rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Parker, NRM 01.1, NHTSA, room 5320, 400 Seventh Street, SW., Washington, DC 20590. Ms. Parker can be reached by telephone at (202) 366-4931.

SUPPLEMENTARY INFORMATION: NHTSA has been reexamining the bases on which the variety of new motor vehicles are divided into distinct classes for the purposes of the National Traffic and Motor Vehicle Safety Act (the Safety Act; 15 U.S.C. 1381 *et seq.*). This reexamination began in response to a petition for rulemaking filed by the Insurance Institute for Highway Safety (IIHS).

The IIHS petition alleged that NHTSA's existing vehicle classification system had become outdated, with the result that the safety standards apply differently to vehicles that are used in the same way by the public. Specifically, IIHS stated that "light trucks and hybrids such as the so-called 'minivans' compete for the same market as passenger cars, but do not have to meet several important passenger car safety standards."

The agency agreed with the IIHS suggestion that the current vehicle classification system ought to be reexamined. Accordingly, NHTSA granted the IIHS petition in a letter dated May 7, 1987. NHTSA published an advance notice of proposed rulemaking (ANPRM) on the vehicle classification system for the safety standards on October 28, 1987 (52 FR 41475). That ANPRM set forth eight different options for a new vehicle classification system, and asked for comments on each of these eight options.

After reviewing the public comments on the ANPRM, NHTSA narrowed the potential options from eight down to two and included those two options in a notice of proposed rulemaking (NPRM) published on October 17, 1988 (53 FR 40463). The first proposed option would have classified a vehicle as either a passenger car, truck, special purpose vehicle (i.e., off-road utility vehicle), or van. This option would have essentially used the same classification system for the safety standards that is currently used by the industry and by the States for vehicle registration and data collection. The other proposed option would have grouped vehicles into one of three categories—passenger car, special purpose vehicle, and truck. Under this option, vans would have been classed as either passenger cars or trucks.

The agency received 23 comments on the NPRM, many of which asked for extensive changes to the proposal or alleged that some vehicles would be inequitably treated under either proposed classification scheme. After extensively analyzing those comments and reconsidering this subject, NHTSA has decided to terminate this rulemaking action.

The major concern expressed by IIHS in its petition and elsewhere was that while passenger cars are subject to the most stringent safety standards, other types of vehicles that are used in the same way and for the same purposes as passenger cars were not subject to all of those safety standards. IIHS identified primarily small pickups, which are classified as trucks for the purposes of the safety standards, and passenger versions of minivans, which are classified as multipurpose passenger vehicles, as the major source of its concern. In its petition, IIHS suggested that one way to address this situation was to revise the classification system so that passenger cars, minivans, and light trucks would all be grouped in the same class.

Since that petition was filed, NHTSA has been examining those provisions of its safety standards that apply to passenger cars, but not to light trucks and multipurpose passenger vehicles, to determine whether it should extend those provisions to those additional types of vehicles. As a result of that examination, the agency has either extended or proposed to extend the following passenger car safety standards to light trucks and multipurpose passenger vehicles: The center high-mounted stop lamp requirement in Standard No. 108; the power window requirements in Standard No. 118; the steering column rearward displacement requirements in Standard No. 204; the automatic crash protection and rear seat lap/shoulder belt requirements in Standard No. 208; the static side door strength requirements in Standard No. 214; and the roof crush resistance requirements in Standard No. 216.

As a result of these actions to extend the passenger car standards, there is now a lesser need to develop a new vehicle classification system than existed when IIHS submitted its petition. It makes little difference from a safety standpoint whether a passenger version of a minivan is classed as a "passenger car," "multipurpose passenger vehicle," or "covered wagon," if the same safety requirements apply to

the minivan regardless of its classification. Even with this lesser need, the agency acknowledges there could be some benefits associated with a new vehicle classification scheme, as expressed in the preamble to the NPRM (53 FR 40468; October 17, 1988). The question the agency had to evaluate is whether these lesser benefits are worth the necessary investment of agency time and resources.

NHTSA's review of the comments to the NPRM showed that the commenters believe there is no alternative classification system that will neatly group existing vehicles with the other existing vehicles with which the vehicles are competitive. For example, the NPRM would have classified the minivans made by Chrysler as passenger cars, while the minivans made by Ford and GM would have been classified as vans. To avoid such unintentional inequities, the agency would have to modify the proposed classes.

The agency has determined that its efforts and resources should more appropriately be directed to activities that have some prospect of a more direct safety payoff than would the development of a new vehicle classification system. Accordingly, this rulemaking action is terminated.

Issued on April 8, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-8616 Filed 4-11-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[RIN 1018-AB56]

Endangered and Threatened Wildlife and Plants; Proposal to Determine Two Utah Plants, Schoenocrambe argillacea (clay reed-mustard) and Schoenocrambe barnebyi (Barneby reed-mustard), To Be Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine two Utah mustard plants, *Schoenocrambe argillacea* (clay reed-mustard) and *Schoenocrambe barnebyi* (Barneby reed-mustard), to be endangered species. These two species are endemic to soils derived from specific geologic substrates in the lower elevations of the Fremont River and Muddy Creek drainages in central Utah and the lower elevations of the Uinta Basin in northeastern Utah.

These two species have very small populations with significant portions subject to habitat disturbance from mineral and potential recreational development. A determination that *S. argillacea* and *S. barnebyi* are endangered species would provide these species protection under the Endangered Species Act, as amended. The Service is requesting comments on this proposed action.

DATES: Comments from all interested parties must be received by June 11, 1991. Public hearing requests must be received by May 28, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone: 801/524-4430 or FTS 588-4430.

SUPPLEMENTARY INFORMATION:

Background

Schoenocrambe argillacea was discovered by Duane Atwood in 1976 from a site in the southern portion of the Uinta Basin in Uintah County, Utah. Welsh and Atwood (1977) described the species as *Thelypodiopsis argillacea*. *Schoenocrambe barnebyi* was discovered by James Harris in 1980 from a site in the southern portion of the San Rafael Swell in Emery County, Utah. Welsh and Atwood described the species as *Thelypodiopsis barnebyi* (Welsh 1981). Rollins (1982) in re-evaluating the cruciferous genera of *Schoenocrambe* and *Thelypodiopsis* moved *T. argillacea* and *T. barnebyi* from *Thelypodiopsis* to *Schoenocrambe* as *S. argillacea* and *S. barnebyi*.

The genus *Schoenocrambe* includes five currently known species: two are abundant, wide-ranging species, one from the higher dry portions of the Great Plains and the other from the lower elevations of the Colorado Plateau; the remaining three are rare endemic species (*S. argillacea*, *S. barnebyi*, and *S. suffrutescens*) from low elevations of the northern and western portions of the Colorado Plateau in the State of Utah (Rollins 1982, Welsh and Chatterley 1985, Welsh et al. 1987). (Note: *Schoenocrambe suffrutescens* (Rollins) Welsh and Chatterley is currently listed as an endangered species under the name *Glaucocarpum suffrutescens* (Rollins) Rollins (52 FR 37420). The Service will begin the use of currently accepted scientific name *Schoenocrambe suffrutescens*, and assign to it the common name shrubby reed-mustard, in order to be in general agreement with current plant classification usage (see Welsh et al. 1987).

Schoenocrambe argillacea is a perennial herbaceous plant, with sparsely leafed stems 15 to 30 centimeters (cm) (6 to 12 inches) tall arising from a woody root crown. The leaves are very narrow with a smooth margin, 10 to 35 millimeters (mm) (0.4 to 1.4 inches) long and, usually, less than 2 mm (0.1 inch) wide. The leaf blades are alternately arranged on the stem and, for the most part, are attached directly to the stem without a petiole. The flowers of *S. argillacea* have petals that are pale lavender to whitish with prominent purple veins and measure 8 to 11 mm (0.3 to 0.4 inch) long and 3.5 to 4.5 mm (0.14 to 0.18 inch) wide. The entire flowers are about 1 cm (0.4 inch) across in full anthesis and are displayed in a raceme of 3 to 20 flowers at the end of the plant's leafy stems.

Schoenocrambe barnebyi is a perennial herbaceous plant, with sparsely leafed stems 22 to 35 cm (9 to 15 inches) tall arising from a woody root crown. The leaves are entire with a smooth margin, 1.5 to 5 cm (0.6 to 3 inches) long and 0.5 to 2.5 cm (0.2 to 1 inch) wide. The leaf blades are alternately arranged on the stem and are attached to the stem by a petiole. The flowers of *S. barnebyi* have petals that are light purple with prominent darker purple veins and measure about 12 mm (0.4 inch) long and 2.5 mm (0.1 inch) wide. The entire flowers are about 1 cm (0.4 inch) across in full anthesis and are displayed in a raceme of, commonly, 2 to 8 flowers at the end of the plant's leafy stems.

Schoenocrambe argillacea grows on clay soils rich in gypsum, overlain with sandstone talus, derived from a mixture of shales and sandstones from the zone of contact between the Uinta and Green Rivers geologic formations. Plant species commonly associated with *S. argillacea* include *Eriogonum corymbosum*, *Ephedra torreyana*, *Atriplex* spp., and *Artemisia* spp. Seven sites comprising one population of *S. argillacea* are known, all within a limited range of about 20 kilometers (12 miles) across, from the Green River to Willow Creek in

southwestern Uintah County, Utah. The species' total population is about 2,000 plants (Shultz and Mutz 1979). The species' total population is on land having Federal leases for oil and gas and/or withdrawn for mineral mining claim entry for its oil shale values. Development of oil and gas leases and possible future oil shale development poses significant potential threats to this species. *Schoenocrambe argillacea*'s small population and restricted habitat make the species vulnerable to man caused and natural environmental disturbances (Welsh 1978, U.S. Fish and Wildlife Service 1990).

Schoenocrambe barnebyi grows on red clay soils rich in selenium and gypsum, overlain with sandstone talus, derived from the Moenkopi and Chinle geologic formations. Plant species normally associated with *S. barnebyi* include *Ephedra torreyana, Atriplex confertifolia, Eriogonum corymbosum,* and *Stanleya pinnata.* Two populations of *S. barnebyi* are know, one near Sy's Butte in the southern portion of the San Rafael Swell, and one in Capitol Reef National Park in the Sulphur Creek drainage west of Fruita. The species' total population is about 2,000 plants (K. Heil, San Juan College, pers. comm., 1989). Assessment work in connection with mining claims for uranium poses a significant ongoing threat to *S. barnebyi* and its habitat. *Schoenocrambe barnebyi*'s small population and restricted habitat make the species vulnerable to man caused and natural environmental disturbances (Heil 1988, Kass 1990, Neese 1987, Welsh and Neese 1984).

In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a notice of review of candidate plants for listing as endangered or threatened species. The 1980 notice included *S. argillacea* as a category 1 species. Category 1 species comprise those taxa for which the Service has on file substantial information on the biological vulnerability and threats to support the appropriateness of proposing to list them as endangered or threatened species. In the **Federal Register** of November 28, 1983 (48 FR 53640), the Service published a supplement to the 1980 notice of review in which *S. barnebyi* was added as a category 2 species. Category 2 comprises taxa for which the Service has information indicating the appropriateness of a proposal to list the taxa as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats.

On September 27, 1985, the Service published a notice of review (50 FR 39526) replacing the 1980 notice and its 1983 supplement. This new notice of review included *S barnebyi* as category 1 species. Status surveys for *S. barnebyi* (Welsh and Neese 1984) provided information which demonstrated the vulnerability of this species. The Service, after a more careful review of the status information on hand concerning *S. argillacea,* changed the status category from category 1 to category 2, pending the acquisition of additional status information concerning this species.

The Service published a notice of review on February 21, 1990 (55 FR 6184), replacing the 1985 notice. This notice maintained both *S. argillacea* and *S. barnebyi* in the same categories as in the 1985 notice. Status surveys for *S. argillacea* (Welsh 1978, Shultz and Mutz 1979, Bureau of Land Management 1989a, U.S. Fish and Wildlife Service 1990) and for *S. barnebyi* (Heil 1988, Neese 1987, Kass 1990, Welsh and Neese 1984) demonstrate the appropriateness of listing these two species as endangered.

Section 4(b)(3)(B) of the Act amendments of 1982 requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species in the Service's 1980 notice with its 1983 supplement were treated as being petitioned. On October 13, 1983, and each successive year, the Service made successive 1-year findings that the petition to list *S. argillacea* and *S. barnebyi* was warranted but precluded by other listing actions of higher priority. This proposal constitutes the next 1-year petition finding for these species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *S. argillacea* (Welsh and Atwood) Rollins and *S. barnebyi* (Welsh and Atwood) Rollins are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All known populations of *S. argillacea* are on Federal lands leased for their oil and gas energy reserves. In addition, the entire range of *S. argillacea* is underlain by oil shale, which may be mined when economic conditions favor it. The species is vulnerable to any surface disturbing activity associated with energy development within its habitat (Welsh 1978, U.S. Fish and Wildlife Service 1990). Recent inventories for rare plants in the range of *S. argillacea* have demonstrated a very small population and range for this species. Shultz and Mutz (1979) demonstrated a population of about 2,000 plants in 9 sites. No additional sites have been located since and two of those sites have apparently become extirpated since their discovery in 1979 (Bureau of Land Management 1989b, U.S. Fish and Wildlife Service 1990).

The primary threat to *S. barnebyi* is habitat destruction associated with potential uranium mining activity. The single hillside where the species occurs in its San Rafael Swell population has an access road bulldozed across it with mining prospects present near the species' limited distribution. Portions of the species' habitat lie within six mining claims at Sy's Butte, which require annual assessment work which could further degrade the species' habitat. The workings of one of the largest uranium mines in the San Rafael Swell are only a mile away on the same exposure of geologic strata as *S. barnebyi* (U.S. Fish and Wildlife Service 1985). The species' highly restricted distribution and very small population make the species highly vulnerable to any activity which would disturb its habitat (Welsh and Neese 1984, Kass 1990). The species' small population in Capitol Reef National Park provides some protection to *S. barnebyi*, but the species' population would be vulnerable to any activity, including road and recreational developments which could occur on its National Park habitat. Both *S. argillacea* and *S. barnebyi* would be vulnerable to the habitat disturbing effects of dispersed off-road vehicles in all their populations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known.

C. *Disease or predation.* Sheep and cattle grazing may have had an impact on *S. argillacea* and *S. barnebyi* historically, but, with current levels of grazing intensity and grazing management by the Bureau of Land Management, domestic livestock grazing is not expected to significantly impact these species.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal, State, or local laws or regulations that address these species specifically or directly provide for the protection of their habitat. The Bureau of Land Management and the National Park Service are aware of both *S. argillacea* and *S. barnebyi* and have considered them in environmental planning of their habitat areas (Bureau of Land Management 1984, Bureau of Land Management 1989a, National Park Service 1982). All plants within the Capitol Reef National Park are protected by regulation from taking; this however, has not been identified as a threat to *S. barnebyi. Schoenocrambe barnebyi* would still be vulnerable to other activities within Capitol Reef National Park such as road and recreational development. Any conservation activity undertaken by Federal agencies would be voluntary. No Federal agencies are legally obligated to conserve *S. argillacea* and *S. barnebyi* at this time.

E. *Other natural or manmade factors affecting their continued existence.* The total populations of both *S. argillacea* and *S. barnebyi* are estimated to be about 2,000 individuals for each species. Seven of the nine sites of *S. argillacea* had less than 200 individuals in1979 (Shultz and Mutz 1979). *S. argillacea* had possibly become extirpated from two of these sites by 1990 (U.S. Fish and Wildlife Service 1990). The San Rafael Swell population of *S. barnebyi* has fewer than 100 individuals. All populations of the species are at levels which may not be demographically stable in the medium to long term. Some of the smaller populations of both *S. argillacea* and *S. barnebyi* may be lost as a result of natural variation in population numbers in the short-term. The effects of past habitat degradation on the species' ability to respond to environmental stress is not known but may be critical to the species' future existence. Only the larger sites of the two species populations may have sufficient genetic variability to provide for long-term adaptation to natural changes in their environmental conditions.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *S. argillacea* and *S. barnebyi* in determining to propose this rule. Based on this evaluation, the preferred action is to list *S. argillacea* and *S. barnebyi* as endangered species. Both species are endemics on habitat that has the potential for being exploited for its energy resources or is subject to other disturbances. The populations of both species are very small, both in numbers and range, and are vulnerable to environmental perturbations which may drive significant portions of their populations into extinction. Because both species are in danger of extinction throughout a significant portion of their range, they fit the definition of endangered as defined by the Act. The status of threatened does not reflect the biological vulnerability of these species' populations. For the reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat for *S. argillacea* and *S. barnebyi* is not presently prudent because possible adverse consequences from vandalism would likely outweigh the minimal benefits accruing from critical habitat designation.

As noted under Factor "A," *S. argillacea* and *S. barnebyi* occupy extremely limited habitat. Designation of critical habitat would entail publication of a detailed description and map of this habitat in the **Federal Register**, exposing the species to the potential threat of vandalism. Lacking mobility, plants are more vulnerable to vandalism than animals. One person could easily vandalize significant portions of the small *S. argillacea* or *S. barnebyi* populations.

Moreover, few, if any, additional benefits would be provided to both species by the critical habitat designation that would not already be provided by listing these species as endangered, particularly because both species are located on lands under Federal jurisidiction. Any Federal action that would impact the plants' habitat would affect the plants as rooted organisms and, consequently, would be addressed through Section 7 consultation. Section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any endangered species of plant from areas under Federal jurisdiction or to maliciously damage or destroy such species on any such area. The Bureau of Land Management and National Park Service are aware of the occurrence of *S. argillacea* and *S. barnebyi* on their lands and of their obligations under the Act. Protection of the species' habitat also would be accomplished through the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal Agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal Agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

The entire known populations of *S. argillacea* and *S. barnebyi* are on Federal lands under either the jurisdiction of the Bureau of Land Management or the National Park Service. The Bureau of Land Management, in addition, is responsible for the leasing of minerals under Federal jurisdiction. Both of these Federal Agencies would be responsible for ensuring that Federal land uses and actions are not likely to jeopardize the continued existence of *S. argillacea* and *S. barnebyi.*

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of Section 9(a)(2) of the Act,

implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued for *S. argillacea* and *S. barnebyi* because these species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203–3507, telephone (703) 358–2093 or FTS 921–2093.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *S. argillacea* and *S. barnebyi*;

(2) The location of any additional populations of a *S. argillacea* and *S. barnebyi* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *S. argillacea* and *S. barnebyi*; and

(4) Current or planned activities in the subject area and their possible impacts on *S. argillacea* and *S. barnebyi*.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Salt Lake City, Utah (see **ADDRESSES** above).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bureau of Land Management. 1984. Final Book Cliffs Resource Management Plan/ Environmental Impact Statement. Vernal, Utah. 519 pp.

Bureau of Land Management. 1989a. San Rafael Proposed Resource Management Plan and Final Environmental Impact Statement. Price, Utah. 511 pp.

Bureau of Land Management. 1989b. Report on the Special Status Plant Inventory conducted on the Diamond Mountain Resource Area, 1989. Vernal, Utah. 13 pp.

Heil, K.D. 1988. Endangered, Threatened, Rare and Other Plants of Concern at Capitol Reef National Park, Utah. National Park Service, Torrey, Utah. 57 pp.

Kass, R.J. 1990. Final Report of Habitat Inventory of Threatened and Endangered and Candidate Plant Species in the San Rafael Swell, Utah. Bureau of Land Management, Salt Lake City, Utah. 87 pp.

National Park Service. 1982. General Management Plan, Final Environmental Impact Statement, Statement of Findings. Capitol Reef National Park, Utah. 139 pp.

Neese, E. 1987. Final Report—Habitat Inventory of *Sclerocactus Wrightiae* and Other Associated Sensitive Species. Vol. I—Text and Photographs. Bureau of Land Management, Richfield, Utah. 119 pp.

Rollins, R.C. 1982. *Thelypodiopsis* and *Schoenocrambe* (Cruciferae). Contrib. Gray Herb. 212:71–102

Shultz, L.M. and K.M. Mutz. 1979. Threatened and Endangered Plants of the Willow Creek Drainage. Bureau of Land Management, Vernal, Utah. 74 pp.

U.S. Fish and Wildlife Service. 1985. *Schoenocrambe barnebyi*: Supplemental Status Report. Salt Lake City, Utah. 3 pp.

U.S. Fish and Wildlife Service. 1990. *Schoenocrambe argillacea*: Supplemental Status Report. Salt Lake City, Utah. 3 pp.

Welsh, S.L. 1978. Status Report: *Thelypodiopsis argillacea*. U.S. Fish and Wildlife Service, Denver, Colorado. 5 pp.

Welsh, S.L. 1981. New Taxa of Western Plants—In Tribute. Brittonia 33:294–303.

Welsh, S.L. and N.D. Atwood. 1977. An Underscribed Species of *Thelypodiopsis* (Brassicaceae) from the Uinta Basin, Utah. Great Basin Nat. 37:95–96.

Welsh S.L. and L.M. Chatterley. 1985. Utah's Rare Plants Revisited. Great Basin Nat. 45:173–230.

Welsh S.L. and E. Neese. 1984. Status Report for *Thelypodiopsis barnebyi* Welsh and Atwood, (Barneby thelypody) Brassicaceae (Cruciferae), Utah Endemic. U.S. Fish and Wildlife Service, Denver, Colorado. 8 pp.

Welsh S.L., N.D. Atwood., L.C. Higgins, and S. Goodrich. 1987. A Utah Flora. Great Basin Nat. Mem. 9:1:894.

Author

The primary author of this proposed rule is John L. England, botanist, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/524–4430 or FTS 588–4430, see ADDRESSES above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and Recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Brassicaceae—Mustard Family:						
*	*	*	*	*	*	
Schoenocrambe argillacea	Clay reed-mustard	U.S.A. (UT)	E		NA	NA
Schoenocrambe barnebyi	Barneby reed-mustard	U.S.A. (UT)	E		NA	NA
*	*	*	*	*	*	

Dated: March 29, 1991.

Richard M. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-8682 Filed 4-1-91; 8:45 am

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 71
Friday, April 12, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 91-013N]

Hazard Analysis and Critical Control Point (HACCP) Workshop—Solicitation of Participants; Pilot Plant Testing—Solicitation of Volunteers

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) intends to assist the meat and poultry industry in developing generic model Hazard Analysis and Critical Control Point (HACCP) plans. This notice solicits participation by technical experts from the meat and poultry industries in the workshop on Cooked Sausage. This workshop will be held May 21–23, 1991, at the Hyatt Regency Fort Worth in Fort Worth, Texas.

In addition, this notice also extends the deadline for volunteers for in-plant pilot testing of generic model HACCP plans as provided in the Agency's January 18, 1991, **Federal Register** notice (56 FR 1972). The notice provided that persons interested in participating in the in-plant pilot testing must notify FSIS by February 15, 1991. Potential volunteers have requested the Agency to extend the deadline for participation in the in-plant pilot testing program. This notice extends the deadline to June 3, 1991.

DATES: Interested participants for the workshop on Cooked Sausage should supply the requested information no later than May 2, 1991. Letters of inquiry from persons interested in volunteering for the in-plant pilot testing study should be submitted by June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Wallace I. Leary, Director, HACCP Special Team, United States Department of Agriculture, Food Safety and Inspection Service, room 2915, South Building, 14th and Independence Avenue, SW., Washington, DC 20250 (202) 245–5087.

SUPPLEMENTARY INFORMATION: FSIS recognizes the merits of HACCP as a system for sanitation and process control. The industry has expressed an interest in incorporating HACCP into the production of meat and poultry products. It is the intention of FSIS to assist the industry by facilitating product specific workshops at which the industry will develop generic HACCP plans. For this purpose, technical experts from the meat and poultry industries are being sought to work on the development of a generic HACCP model for cooked sausage. Individuals or companies volunteering to participate in the development of the model during the workshop need not have previous experience in HACCP-based operations. In fact, it is desirable to include firms with varying degrees of prior HACCP experience.

The workshop on Cooked Sausage will be held on May 21–23, 1991, at the Hyatt Regency Fort Worth, 815 Main Street, Fort Worth, Texas 76102.

If you are interested in participating in the workshop on Cooked Sausage, submit a written request noting the following:

(1) Organization affiliation, i.e., national and/or local trade association(s), if any;

(2) If the participant will be representing a company or corporation;

(3) If the participant represents an independent operation;

(4) An indication of plant size, i.e., small, medium, or large; and

(5) Major product lines and approximate volumes.

The number of industry participants involved in the development of the model HACCP plan may have to be limited. If you are interested in participating in the workshop on Cooked Sausage and/or receiving technical information on the Agency's HACCP initiative, address written requests to Dr. Wallace I. Leary at the above address.

The workshop on Cooked Sausage will also be open to the public for observation. Space available for observers may be limited and seating will be based on a first come, first served basis. Therefore, if you would like to attend the workshop as an observer, it would be helpful if you would submit your request in writing. Please indicate the following:

(1) Your name, address and phone number; and

(2) Who you will be representing, if applicable. Observers will be given an opportunity to comment during the course of the workshop session.

There is no registration fee, but transportation and per diem expenses must be borne by the participant or his/her sponsor.

Future **Federal Register** notices will be issued regarding site location, confirmation of times and dates, and future workshop participation.

The tentative schedule for the other workshops is as follows:

Month	Region	Product
Aug. 1991	Southeastern	Poultry slaughter (young chickens).
Dec. 1991	Western	Fresh ground beef.
Mar. 1992	North Central	Swine slaughter (market hogs).

On January 18, 1991, FSIS published a notice in the **Federal Register** (56 FR 1972) soliciting volunteers for in-plant pilot testing of generic model HACCP plans developed at these workshops. The notice provided that persons interested in participating in the in-plant pilot testing must notify FSIS by February 15, 1991. Potential volunteers have requested the Agency to extend the deadline for participation in the in-plant pilot testing program. This notice extends the deadline to June 3, 1991.

If you are interested in participating as a pilot test plant or receiving more information on the pilot study, submit a written request noting the following:

(1) Name, address, phone number and establishment number;

(2) Which HACCP model is the plant volunteering to pilot test;

(3) What products in the category are produced;

(4) Affiliation, i.e., national and/or local trade association(s), if any;

(5) An indication of product volume, i.e., small, medium, or large;

(6) Type(s) of operation and number of shifts. Requests should be addressed to Dr. Wallace I. Leary at the above address.

Done at Washington, DC, on: April 8, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-8664 Filed 4-11-91; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Little Goose/Piney Creek drainages multiple use road project, Bighorn National Forest, Sheridan and Johnson Counties, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, will prepare an environmental impact statement (EIS) on a proposal which would implement the Forest Plan by providing access to the Little Goose/Piney Creek drainages by the construction of a multiple use road. Proposed use activities include recreation, timber harvesting and administrative needs such as administration of special uses, reservoir and ditch maintenance, range and wildlife management, and fire control.

DATES: Comments concerning the scope of the analysis should be received in writing by May 10, 1991.

ADDRESSES: Send written comments to Craig L. Yancey, Tongue District Ranger, Bighorn National Forest, 1969 South Sheridan Avenue, Sheridan, Wyoming 82801.

FOR FURTHER INFORMATION CONTACT: Arthur Bauer, Tongue District Resource Staff Officer (307) 672-0751.

SUPPLEMENTARY INFORMATION: The proposal is to construct two sections of road totaling approximately 26 miles. The first 11 mile section will be studied in detail. The second 15 mile section will be addressed as a connected action. An EIS will be prepared because an environmental analysis completed in October of 1986 indicated significant controversy concerning the project. A decision notice signed on October 27, 1986 proposing 11 miles of road construction was administratively appealed and remanded by the Regional Forester back to the Bighorn Forest in May of 1987 for further analysis. This analysis will disclose the environmental effects of the proposed road construction and will identify any connected actions. Projects subsequent to this road construction EIS will have a project level National Environmental Policy Act (NEPA) analysis completed. Possible alternatives include, a high standard multi-purpose road to accommodate passenger vehicles, a lower standard road to accommodate single purpose access (i.e. timber harvesting, logging truck traffic), and a no action alternative. The Bighorn National Forest is soliciting comments to determine the scope of the issues to be addressed during the EIS process. The scoping process will include public involvement through news media announcements, mailings to potentially affected interests, brochures placed at public locations throughout the community of Sheridan, Wyoming, and comments received during the previous proposal. The comment period for the scoping process ends May 10, 1991, at which time alternatives will be developed. A draft EIS identifying the Forest Service preferred alternative will be completed by September 1, 1991 and released for 90-days of public review and comment. The final decision will be issued by April, 1992.

Dated: March 29, 1991.

Lloyd D. Todd,

Forest Supervisor.

[FR Doc. 91-8618 Filed 4-11-91; 8:45 am]

BILLING CODE 3410-02-M

Stikine Area Communications Site Analysis; Stikine Area, Tongass National Forest Petersburg Ranger District, Petersburg, AK; Revision of Notice of Intent To Prepare Environmental Impact Statement

This Notice of Intent revises the previous Notice of Intent, published in the Federal Register on January 28, 1991, which described a Draft Environmental Impact Statement (EIS) that would disclose the effects of communication site designations and communication site authorizations. Instead, the EIS will disclose only the effects of communication site designations related to providing proposed services.

The Department of Agriculture, Forest Service will prepare an EIS to determine whether to designate Crystal Mountain as a communication site on the Stikine Area of the Tongass National Forest. Any site-specific permit authorization will be addressed in a separate environmental analyses for any action alternative selected.

The alternatives will range from designation of Crystal Mountain to no-action, in which Crystal Mountain would not be designated. The EIS will consider whether the proposed needs could be met on another peak. This includes peaks that are already designated provided they are capable of providing the proposed services, that site will be considered in detail as well. A scoping letter has already been mailed to interested groups, organizations, and members of the public.

The comment period on the Draft EIS will be 45 days from the date on which notice of availability of the Draft EIS is published in the Federal Register. It is very important that those interested in these proposed designations participate at that time. To be most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed.

In addition, Federal court decisions have established that reviewers of Draft EISs must structure their participation so that it is meaningful and alerts an agency to the reviewer's position and contentions. Environmental objections that could have been raised at the Draft stage may be waived if not raised until after completion of the Final EIS. The reason for this is so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

The Draft EIS should be available for public review by April 15, 1991. The Final EIS is scheduled to be completed by August 1991.

The responsible official for the site designation decision and amendment of the Tongass Land Management Plan is Michael A. Barton, Regional Forester, Alaska Region.

Questions concerning the analysis should be sent to Mark Hummel, Team Leader, USDA Forest Service, P.O. Box 309, Petersburg, AK 99833 (phone 907/772-3841).

Dated: April 4, 1991.

Michael A. Barton,

Regional Forester.

[FR Doc. 91-8602 Filed 4-11-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket No. 0112-01]

Herman Kluever, Respondent; Order on Export Privileges

On March 8, 1991, the Administrative Law Judge entered his Recommended Decision and Order in the matter referred to above. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action.

1. I hold that as a matter of law Kluever committed eighteen violations of the Regulations, as alleged in the Charging Letter, not six violations, as found by the Administrative Law Judge.

2. The Administrative Law Judge recommended the denial of the Respondent's U.S. export privileges for a period of five years, with four suspended. Based on the seriousness of the Respondent's violations, and in light of the strict United States policy mandated by Congress with respect to South Africa's military and police entities, I am modifying the Order of the Administrative Law Judge to provide for a denial of the Respondent's U.S. export privileges for a period of thirty years.

In all other respects, having examined the record and based on the facts in the case, I hereby affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: April 5, 1991.

Dennis Kloske,

Under Secretary for Export Administration.

Decision and Order on Default

In the matter of Herman Kluever, Respondent.

Respondent: Herman Kluever, 102 General Bryer Street, Apt. No. 27, Pretoria North 0182, Republic of South Africa.

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel, for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW., Washington, DC 20230

Preliminary Statement

On July 16, 1990, the Office of Export Administration ("Agency"), Bureau of Export Administration, U.S. Department of Commerce issued a charging letter against Respondent Herman Kluever under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended ("Act"), and the Export Administration Regulations ("Regulations").

The Agency charged that on six separate occasions Respondent Kluever made material misleading statements on export control documents respecting the ultimate consignees in the Republic of South Africa in violation of the embargo on banning exports to military entities which are prohibited by § 787.5 of the Regulations. The Agency has separately charged that Respondent aided and abetted in the disposal of electronic medical equipment to the Republic of South Africa in violation of the prohibition of resale or delivery to police or military entities as prohibited by §§ 787.4 and 787.6.

Because of the failure to answer, this office issued an Order, dated September 12, 1990, ruling Respondent in default and directing Agency Counsel to file an evidentiary submission by October 12, 1990 pursuant to § 788.8 of the Regulations, which provides:

Default (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

Agency Counsel filed the Motion for a Default Judgment on October 12, 1990. The Agency also submitted documentary evidence to support allegations made in the charging letter. A copy of the above mentioned Motion was also sent to the Respondent on October 30, 1990, to which there has been no response.

Facts and Discussion

On six separate occasions between January 1987 and January 1989, Kluever aided and abetted Scientific Medical Systems Ltd., also doing business as Squibb Medical Systems (both, Medical Systems) directly or indirectly, to make false or misleading statements of material fact on Shipper's Export Declarations and other export control documents, submitted to the Agency, by falsely stating that the ultimate consignees were non-military entities. In fact, however, the commodities were ultimately destined for one or more Republic of South Africa military hospitals. The applicable Regulation, provides in pertinent part: "An embargo is in effect on the export or re-export to the Republic of South Africa of any commodity * * * used by or for *military* or police entities * * *." (Emphasis added).

On the same six separate occasions between January 1987 and January 1989, Kluever also aided and abetted Medical Systems to dispose of electronic medical equipment that originated in the United States to Republic of South Africa military entities contrary to the terms and conditions of export control documents, containing the following statement: "Resale or delivery, directly or indirectly, for use by or for police or military entities prohibited." or words to that effect. Kluever and Medical Systems did so with knowledge or reason to know that a violation of the Regulations had occurred, was about to occur, or was intended to occur with respect to commodities exported from the United States.

In total, the Agency asserts that Kluever committed 18 violations of § 787.2 of the Regulations based upon six transactions.

At the time, Kluever was the managing director of a South African-based company dealing in medical instruments.[1] With an intention to re-sell or distribute United States medical equipment inside South Africa, including to the South African military, his company ordered medical equipment from the United States.

However, "an embargo [at the time identified in the Charging Letter was] in effect on the export or re-export to the Republic of South Africa of *any* commodity * * * used by or for military or police entities * * *." His U.S. suppliers had notified him of the U.S. embargo against any resale to or use by the military (Agency Ex. 2, 3).

The Agency submission supports the conclusion that neither Kluever nor Medical Systems employees intended to inform the U.S. exporters that the medical equipment ordered from the United States was intended by Kluever or Medical Systems to be disposed of to military hospitals. Kluever personally instructed Medical Systems employees, Rui Martin and Paul de Kock, to delete all references on export control documents about the true military end user and substitute civilian end users. Rui Martin said "I was explicitly instructed by Herman Kluever to replace the customer Military Hospital #1 with the civilian Pretoria Hospital * * *" (Agency Ex. 4). Paul de Kock said "I was explicitly instructed by Herman Kluever to replace the Military hospital customer on any order form * * *" (Agency Ex. 5).

In addition to instructing Martin and de Kock to misrepresent the end user on export control documents, Kluever personally signed false certificates stating that the goods would not be transferred to the military. (Agency Ex. 6, 7).

As a result of these misrepresentations of material fact to the Agency by Medical Systems, indirectly through U.S. exporters, in connection with exports from the United States, the medical equipment was shipped from the United States to Scientific Medical in South Africa in violation of § 787.5 of the Regulations.

To reflect the embargo in effect under § 785.4(a)(2) of the Regulations, the U.S.

[1] Agency Counsel, has not requested that Respondents' principal, or the two companies mentioned above, for which the equipment was obtained, be named as Respondents or related persons.

exporters marked the export control documents of the medical equipment Medical Systems brought from the U.S. with the following statement: "Resale or delivery, directly or indirectly, for use by or for police or military entities prohibited" or words to that effect. (Agency Ex. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19). By virtue of this language, Medical Systems and Kluever were clearly informed by the U.S. exporters of the equipment, that U.S. export regulations required that no commodities could be resold or otherwise made available, directly or indirectly, to or for use by any Republic of South Africa police or military entity.

Nevertheless, on or about the following six dates: January 21, 1987, March 20, 1987, September 23, 1987, February 29, 1988, June 16, 1988 and January 23, 1989, it appears that Medical Systems disposed of medical equipment to the South African military—specifically to military hospitals. (Agency Ex. 20, 21, 22, 23, 24, 25). In disposing of the medical equipment, on those separate six occasions, to the South African military, with knowledge or reason to know that a violation of the Regulations had occurred, was about to occur, or was intended to occur, Medical Systems violated §§ 787.4 and 787.6 of the Regulations, for a total of 12 violations.

Kluever has freely admitted in two different interviews, facts from which this Tribunal finds that Kluever aided and abetted Medical Systems to violate U.S. export controls as alleged in the Charging Letter. In one interview:

> Kluever said there was no corporate knowledge above the SMS [Scientific Medical Systems] South Africa level on the diversion of medical equipment to military hospitals. He *[Kluever] indicated that the plan to divert was instigated in his office because of the perception that licenses could take months to obtain* and the inherent unfairness in being able to sell to black or white private hospitals while being restricted on sales to military hospitals, that according to Kluever, treated 75% civilian patients (Agency Ex. 26) (Emphasis added).

He also has admitted his illicit role in an interview with one of Medical Systems U.S. suppliers:

> Mr. Kluever subsequently admitted to changing the documents, misleading [U.S. exporters of medical equipment] about the destination of such shipments. Mr. Kluever was also aware and admitted to have knowledge of the legal ramifications of such action. (Agency Ex. 27.)

By instructing Medical Systems employees to make false misrepresentations to the Agency as to the actual military end users of the medical equipment, by personally signing certificates stating that the goods would not be transferred to the military, by changing documents himself, and by aiding and abetting Medical Systems to unlawfully dispose of the goods to the South African military, in the six transactions involved, Kluever committed a total of six violations under § 787.2 of the Regulations. While the number of subsections within § 787.7 which appear to have been violated are significantly more, the number of transactions was six. That those six transactions resulted in breach of numerous sections of the regulations should not be held to make more of this case than what actually occurred. That is, there were six illicit transactions.

As a sanction, Agency Counsel proposes a 30-year denial period, citing the Congressional policy concerning exports to South Africa provided in the Comprehensive Anti-Apartheid Act. In implementing that legislation the Agency has promulgated § 785.4(a)(2) of the Regulations which provides:

> An embargo is in effect on the export or reexport to the Republic of South Africa * * * of *any* commodity, including commodities that may be exported to any destination in Country Group V under a general license, where the exporter or reexporter knows or has reason to know that the commodity will be sold to or used by or for military or police entities * * *. (Emphasis in original.)

Kluever clearly committed violations of the strict United States policy mandated by Congress with respect to South Africa's military and police entities, the key apartheid-enforcing agencies.

Conclusion

The Agency's presentation establishes that Respondent caused material misrepresentations to be made on export control documents, e.g., the incorrect statement of the ultimate consignee, on the Shipper's Export Declaration. Those misrepresentations constituted a prohibited act under § 787.5 of the Regulations, and causing such a prohibited act violates § 787.2 of the Regulations. Consequently, I find that on six occasions Respondent violated Section 787.2 of the Regulations.

Agency Counsel's proposed 30-year denial of U.S. export privileges is grossly excessive. The clearly intentional nature of Respondent's making the misrepresentations and arranging the exports relating as they do to foreign policy boycott restrictions, warrants some action, however, absent some showing of aggravation such as use of the equipment to further apartheid or abuse of human rights the violation is simply not a 30-year sanction. The record reflects the unrebutted representation that some 65% of the patients in such medical facilities are civilians. The Agency has produced no evidence nor made any assertion that this equipment was to be used for boycott avoidance purposes. As the late Judge Benjamin Cordoza said in a decision some years ago, the trial judge's function is to "weight the effect of the default and adjust the rigor of the remedy to the gravity of the wrong." I have done that here.

I. For a period of five years from the date of the final Agency action, Respondent, Herman Kluever, 102 General Bryer Street, Apt. No. 27, Pretoria North 0182, Republic of South Africa and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing one year from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 788.16 of the Regulations, for the remainder of the five year period set forth in Paragraph I above, and shall be remitted at the end of the such five year period without further action, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding.

During the four year suspension period, Respondent may participate in transactions involving the export of the U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for re-export authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any

commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, re-export, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, re-export, transshipment or diversion of any commodity or technical data exported or to be exported from the United States. The provisions of this paragraph will also be suspended during the four year suspension period.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Hugh J. Dolan,

Administrative Law Judge.

Dated: March 8, 1991.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 91-8637 Filed 4-11-91; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 515]

Resolution and Order Approving the Application of the Presidio Economic Development Corp. for Foreign-Trade Zone in Presidio, TX; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Presidio Economic Development Corporation, a Texas non-profit corporation, filed with the Foreign-Trade Zones Board on March 1, 1990, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Presidio, Texas, within the Presidio Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority; To Establish, Operate, and Maintain a Foreign-Trade Zone In Presidio, TX

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Presidio Economic Development Corporation (the Grantee), a Texas non-profit corporation, has made application (filed March 1, 1990, FTZ Docket 10–90, 55 FR 10270) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Presidio, Texas, within the Presidio customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 178, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and

unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of March, 1991, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest: John J. Da Ponte, Jr., *Executive Secretary.*

[FR Doc. 91-8599 Filed 4-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 516]

Termination of Foreign-Trade Subzone 46C, Norwood, OH

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on June 29, 1987, the Foreign-Trade Zones Board issued a grant of authority to the Greater Cincinnati Foreign-Trade Zone, Inc. authorizing the establishment of Foreign-Trade Subzone 46C (Board Order 356, 52 FR 27233, 7/20/87);

Whereas, the Greater Cincinnati Foreign-Trade Zone, Inc. advised the Board on April 3, 1989 (FTZ Docket 6–89), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 46C;

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone No. 46C effective this date.

Signed at Washington, DC this 29th day of March, 1991.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-8600 Filed 4-11-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-403-801]

Antidumping Duty Order: Fresh and Chilled Atlantic Salmon from Norway

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that fresh and chilled Atlantic salmon (Atlantic salmon) from Norway were being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of Atlantic salmon from Norway.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of Atlantic salmon from Norway, made on or after October 3, 1990, the date on which the Department published its preliminary determination in the **Federal Register** (55 FR 40418), will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, or withdrawals from warehouse for consumption, made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Edward Easton, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769 or (202) 377–1777, respectively.

Scope of Order

The product covered by this order is the species Atlantic salmon (Salmo salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon; Chinook (also called "King" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the scope of the order are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under the Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.9. The HTS subheading is provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

SUPPLEMENTARY INFORMATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act), on February 15, 1991, the Department made its final determination that Atlantic salmon from Norway are being sold at less than fair value (56 FR 7661, February 25, 1991). On April 1, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of Atlantic salmon from Norway. These antidumping duties will be assessed on all unliquidated entries of Atlantic salmon from Norway entered, or withdrawn from warehouse, for consumption on or after October 3, 1990, the date on which the Department published its preliminary determination notice in the **Federal Register**

SUSPENSION OF LIQUIDATION: On or after the date of publication of this notice in the **Federal Register,** U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, as cash deposit equal to the estimated weighted-average dumping margins as noted below:

Manufacturers/producers/exporters	Margin percentage
Salmonor A/S	18.39
Sea Star International	24.61
Skaarfish Mowi A/S	15.65
Fremstad Group A/S	21.51
Domestein and Co	31.81
Saga A/S	26.55
Chr. Bjelland	19.96
Hallvard Leroy A/S	31.81
All Others	23.80

This constitutes the antidumping duty order with respect to Atlantic salmon from Norway, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and § 353.21 of the Commerce Regulations (19 CFR 353.21).

Dated: April 5, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-8594 Filed 4-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-403-802]

Countervailing Duty Order: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, U.S. Department of Commerce determined that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters of fresh and chilled Atlantic salmon from Norway. In a separate investigation, the U.S. International Trade Commission (ITC) determined that imports of fresh and chilled Atlantic salmon from Norway are materially injuring a U.S. industry.

As a result of the affirmative findings of the Department and the ITC, pursuant to section 705(a) and (b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671d(a) and (b)) (the Act), all liquidated entries of fresh and chilled Atlantic salmon from Norway which were entered, or withdrawn from warehouse, for consumption, on or after June 29, 1990, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register** (55 FR 26727), and before October 28, 1990, the date we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or after the date of publication of the order will be liable for the possible assessment of countervailing duties. Furthermore, a cash deposit of the estimated countervailing duties must be made on all entries or withdrawals from warehouse, of fresh and chilled Atlantic salmon from Norway, for consumption, made on or after the date of publication of this countervailing duty order in the **Federal Register**

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Graham or Rick Herring, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4105, or 377-3530.

SUPPLEMENTARY INFORMATION: The product covered by this order is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink"), and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, beld, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently classifiable under *Harmonized Tariff Schedule* (HTS) sub-heading 0302.12.0002.9.

In accordance with section 705(a) of the Act (19 U.S.C. 1671d(a)), on February 15, 1991, the Department made its final determination that producers or exporters of fresh and chilled Atlantic salmon in Norway received benefits which constitute subsidies within the meaning of the countervailing duty law (56 FR 7678). On April 1, 1991, in accordance with section 705(d) of the Act, the ITC notified the Department of its determination that imports of fresh and chilled Atlantic salmon are materially injuring a U.S. industry.

Therefore, in accordance with section 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act (19 U.S.C. 1671e(a)(1) and 1675), countervailing duties equal to the amount of the estimated net subsidy on all entries of fresh and chilled Atlantic salmon from Norway. These countervailing duties will be assessed on all unliquidated entries of fresh and chilled Atlantic salmon from Norway which were entered, or withdrawn from warehouse, for consumption, on or after June 29, 1990, the date on which the Department published its preliminary countevailing duty determination in the **Federal Register**, and before October 28, 1990, the date we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or after the date of publication of this order in the **Federal Register**. Entries of fresh and chilled Atlantic salmon on or after October 28, 1990, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countevailing duties since we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 0.71 Norwegian Kroner per kilogram for all entries of fresh and chilled Atlantic salmon from Norway.

This determination constitutes a countervailing duty order with respect to fresh and chilled Atlantic salmon from Norway purusant to section 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

NOTICE OF REVIEW: In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a) (1)), the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding the review, contact Paul McGarr at (202) 377-2786, Office of Countervailing compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e).

Dated: April 3, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-8595 Filed 4-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-087]

Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order on Portable Electric Typewriters From Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.)

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Initiation of anti-circumvention inquiry.

SUMMARY: On the basis of a petition filed with the Department of Commerce (the Department), we are initiating an anti-circumvention inquiry to determine whether Brother Industries, Ltd. and Brother Industries (USA), Inc. (Brother), producers of portable electric typewriters (PETs), are circumventing the antidumping duty order on PETs from Japan issued on May 8, 1980 (45 FR 30618).

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Bradford Ward or V. Irene Darzenta, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0161, 377-5288 or 377-0186, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1991, the Department received a petition filed by the Smith Corona Corporation (Smith Corona), requesting that the Department conduct an anti-circumvention inquiry on the antidumping duty order on PETs from Japan, in accordance with section 781(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1677j(a)) (the Act). Smith Corona alleges that Brother is circumventing the antidumping duty order on PETs by importing parts and components from Japan, and assembling them into finished PETs for sale in the U.S. market.

Scope of the Order

The products covered by the order subject to this anti-circumvention inquiry are PETs from Japan which include typewriters with calculators and certain later-developed portable electronic typewriters including those with text display and expanded memory of the same class or kind as PETs within the scope of the order. This later-developed merchandise is of the same class or kind as a PET if it meets all of the following seven physical criteria: (1) Is easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) is electric, regardless of source of power; (3) is comprised of a single, integrated unit; (4) has a keyboard embedded in the chassis or frame of the machine; (5) has a built-in printer; (6) has a platen (roller) to accommodate paper; and (7) only accommodates its own dedicated or captive software. (See Final Scope Ruling: Portable Electric Typewriters from Japan (55 FR 47358, November 13, 1990).)

PETs from Japan are currently classifiable under Harmonized Tariff Schedule (HTS) subheadings 8469.21.00 and 8469.29.00. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of product coverage.

Initiation of Anti-Circumvention Proceeding

Section 781(a) of the Act authorizes the Department to include merchandise within the scope of an existing antidumping duty order if the merchandise sold in the United States is of the same class of kind as merchandise produced in a foreign country that is the subject of an antidumping duty order, the product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies, and the difference between the value of such product sold in the United States and the value of the imported parts and components produced in the subject foreign country is small.

In accordance with 19 CFR 353.29(b) and (e), we are initiating an anti-circumvention inquiry on the antidumping duty order on PETs from Japan (case number A-588-087). We intend to complete this inquiry according to the following schedule unless extraordinary complications arise:

• Initial request for information.	Apr. 12, 1991.
• Response	Apr. 26, 1991.
• Anti-circumvention questionnaire.	May 3, 1991.
• Response	June 3, 1991.
• Supplemental questionnaire.	June 14, 1991.
• Response	June 24, 1991.
• Verification	July 8-19, 1991.
• Preliminary determination	Aug. 23, 1991.
• Case hearing briefs	Aug. 30, 1991.
• Rebuttal briefs	Sept. 6, 1991.
• Hearing	Sept. 10, 1991.
• Final determination	Oct. 4, 1991.

We intend to notify the International Trade Commission (ITC) in the event of an affirmative preliminary determination of circumvention, in accordance with 19 CFR 353.29(d)(7)(iii). Should consultation with the ITC be necessary, the post-preliminary determination schedule will be postponed by 60 days.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 353.29(j)(2), the Department will instruct the U.S. Customs Service to suspend liquidation in the event of an affirmative preliminary determination of circumvention.

This notice is published pursuant to section 781(a) of the Act (19 U.S.C. 1677j(a)).

Dated: April 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-8597 Filed 4-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-702]

Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 10, 1990, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on stainless steel butt-weld pipe and tube fittings ("SSPFs") from Japan. The review covers one manufacturer, Nippon Benkan Kogyo, K.K. ("Benkan"), an exporter of this merchandise to the United States for the period from September 16, 1987 through February 28, 1989. We preliminarily found a dumping margin of 0.52 percent.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the margin from that presented in our preliminary results. We have determined the final margin to be 0.70 percent.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh or Linda L. Pasden, Office

of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1990, the Department published in the Federal Register (55 FR 237) the preliminary results of its administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Japan (53 FR 9787, March 25, 1988). The Department has completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Imports covered by this review are shipments of stainless steel butt-weld pipe and tube fittings from Japan. These fittings are used in piping systems for chemical plants, phamaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants, and other applications. Such merchandise is classifiable under Harmonized Tariff Schedules ("HTS") item number 7307.230000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers Benkan, a manufacturer/exporter to the United States of stainless steel pipe and tube fittings from Japan, and the period from September 16, 1987 through February 28, 1989.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments and rebuttal comments from Flowline, the petitioner, and Benkan, the respondent.

Comment 1: Flowline objects to the methodology used in calculating the difference in merchandise adjustment ("difmer"). Flowline contends that raw material costs for the production of the pipe fittings (basis for the difmer adjustment) should not be based on the entire period of review. Instead the raw material costs should be those incurred during the period corresponding to the dates of the sales to the United States.

Benkan objects to limiting the raw material costs to the period corresponding to the dates of the sales to the United States. It argues that the petitioner's suggestion does not capture the raw material costs of the home market fittings used for comparison pursuant to the Department's 90/60 day contemporaneous rule.

Department's position: We agree with the petitioner that the difmer should not be based on the raw material costs for the entire review period because the sales to the United States under consideration are concentrated in the latter part of the review period. However, we do not agree that the raw material costs should be limited to the U.S. sales period (November 1988 through February 1989); rather, we need to capture the costs of home market merchandise used for comparison purposes. Where difmer adjustments were needed, the Department used a six month average (August 1988 through February 1989) of the raw material costs for the pipe fittings.

Comment 2: Flowline argues that the shipment date should be used as the date of sale for the sales to the United States for calculating foreign market value, for currency conversions, and for calculating credit costs. Flowline further argues that there is an inconsistency between what was used in the preliminary determination as date of sale and what is reflected in the computer program. The computer program used the purchase order date for date of sale while the preliminary determination noted shipment date for date of sale. The petitioner urges ITA to use the shipment date as the date of sale in the U.S. market because shipment date was used in the original investigation, and because there is no evidence suggesting that a new approach should be employed.

Benkan argues that the purchase order date is the appropriate sales date for U.S. sales. It notes that the date of sale is typically the purchase order date, the contract date, or, where written confirmation is given, the order confirmation date (i.e. the point in time when the basic terms of the contract are agreed to by the parties). Benkan states that, contrary to the situation in the original investigation in which the U.S. selling price was revised between the purchase order date and the shipment date in reaction to an appreciation of Japanese yen, no such price revisions occurred during this period of review. Benkan states that because the Department did not find price revisions and the essential U.S. sales terms became fixed at the purchase order date, the purchase order date should be used as date of sale for U.S. sales.

Department's position: The Department incorrectly stated in the preliminary notice that we used date of shipment as date of sale for the U.S. sales. Our calculations have consistently used the purchase order date as the date of sale to the United States. At verification (see verification report dated June 5, 1990, at page 7) we found no evidence that price revisions occurred between the purchase order date and the date of shipment. The Department used the purchase order date as the date of sale since the essential terms of the transactions were fixed at this point.

Comment 3: Flowline argues that Benkan inaccurately asserted that the difmer methodology used in this administrative review is the same as the methodology used in the original investigation, the latter having been approved by the Department and having given rise to no objections from petitioner. Flowline notes that Benkan is now using the net finished product weight rather than the gross weight to calculate the difmer. The petitioner notes that Benkan has failed to account for the scrap metal lost in the production of a fitting, that U.S. fittings weighed more than corresponding Japanese fittings, and that larger fittings generated more scrap. Also, Flowline argues that during the original investigation, Benkan described the difference between 304 and 304L grade stainless steel and 316 and 316L stainless steel as not meaningful. However in this review, the material grade for all four grades is distinguished and is treated as second in importance only to the shape of the fitting. Flowline requests that Benkan explain why the material grade is elevated in importance in this review and that Benkan demonstrate its impact on the similar merchandise selections.

Benkan contends that the petitioner has not provided any evidence to support its argument that production of larger fittings will generate more scrap and that Benkan has consistently understated the difmer. Benkan states that the type of fitting being produced, the manufacturing process used, and the size of the fitting determine the amount of scrap generated. Benkan argues that larger fittings do not necessarily produce more scrap per kilo of finished fittings. Benkan further argues that this issue was raised much too late in the administrative review to permit the Department to now evaluate and verify the petitioner's approach to the difmer adjustment. Benkan's argument as to the treatment of material grades 304 and 304L (or 316 and 316L) in the original investigation questionnaire response was that grades 304 and 304L (or 316 and 316L) were equally similar to the so-called "dual grades" (i.e., 304/304L and 316/316L). For this review, no "dual-grade" steel material is involved. Therefore, Benkan gives relatively greater importance to material grade in

this review. Benkan notes that the petitioner did not raise objections to Benkan's methodology in a timely manner.

Department's position: The Department agrees with the petitioner that the difmer for sales involving similar product matches should be recalculated to reflect the yield rates for the different fittings. The Department requested Benkan to provide for the record the yield rates and the total recovery of scrap by quantity in kilograms and value in yen in the production of the subject fittings. Benkan provided for each type of fitting in the U.S. and home market (see February 14, 1991 submission) the yield rates, the finished product weights, and the base material weights, but not the scrap information. Benkan stated that the revenue from the scrap sales is not allocated to the production costs of the subject fittings. Benkan considers this revenue as miscellaneous.

After reviewing Benkan's submission, the Department noted discrepancies between the February submission and the questionnaire response in regards to the U.S. product weights of the fittings. The U.S. weights reported in the submission were considerably higher than the U.S. weights reported in the questionnaire response for certain fittings. The U.S. weights reported in the questionnaire response are very similar to the home market weights reported in the submission. We found no discrepancy between the weights reported for the home market fittings in the submission and the questionnaire response. The Department continues to use the finished weights from the questionnaire response, which were verified, for the difmer adjustment. The Department used the applicable yield rates for the difmer calculation. The petitioner did not object to the actual yield rates submitted. Since Benkan provided no scrap revenue information, no offset was made. Also, in determining such or similar merchandise, the Department used the criteria suggested in Benkan's response dated July 3, 1989. The Department agrees with the respondent that there are differences between the material grades 304 and 304L (or 316 and 316L). These differences have been taken into account.

Comment 4: Flowline argues that ITA should use Benkan's actual credit expenses, rather than credit expenses calculated on an agreed payment date, in making this circumstance of sale adjustment. They note that ITA merely used the credit costs submitted by Benkan in its July 1989 submission. They also cite the verification report where deviations exist in Benkan's calculations for credit expenses. Therefore, actual credit expenses should be used in making this circumstance of sale adjustment.

Benkan stated that home market terms of sale were verified. At verification, the Department found the actual credit expenses were very similar to the calculated credit expense. Since there are many thousands of home market transactions and payment modes are varied, this approach was the only practical way to report home market credit expenses. To determine actual payment experience for each transaction places an inordinate burden on Benkan.

Department's position: The Department verified the credit terms for both markets. We found that actual credit expenses generally agreed with the calculated expenses. In verifying the actual credit expense, some expenses were found to be understated and some overstated. These differences tended to be minor. Consequently, for this review, the Department does not believe a change in the credit calculation is warranted.

Comment 5: Flowline stated that movement charges should be calculated on an entry-by-entry basis rather than on an aggregated monthly basis. Benkan should already know exactly what its movement costs for each sale are.

Benkan argues that the use of movement charges aggregated on a monthly basis is appropriate. These movement charges were calculated and reported based on the actual costs incurred.

Department's position: We agree with the petitioner that the Department should use the entry-by-entry data that was provided. This is consistent with the Department's preference to use shipment-specific data in calculating movement charges. For the final results, the Department used the provided shipment-specific data in calculating movement charges.

Comment 6: Flowline urges ITA to issue appropriate instructions to Customs alerting them to the fact that some "parts of semiconductor manufacturing equipment" may be subject to this order.

Department's position: The Department will include in its instructions to Customs that some of these pipe fittings can be used in semiconductor applications; but, regardless of Customs classification, such pipe fittings are subject to the antidumping order and to suspension of liquidation.

Final Results of the Review

As a result of our review, we determine that a margin of 0.70 percent exists for Benkan for the period September 16, 1987 through February 28, 1989.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentage stated.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based upon the above margin shall be required for Benkan. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after February 28, 1989, and who is unrelated to the reviewed firm, a cash deposit of 0.70 percent will be required. The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the last published rate.

These deposit requirements are effective for all shipments of stainless steel butt-weld pipe and tube fittings from Japan, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22(c)(8)).

Dated: April 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-8696 Filed 4-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents and the petitioner, the Department of Commerce has conducted

an administrative review of the antidumping finding on tapered roller bearings, four inches or less in outer diameter, and components thereof, from Japan. The review covers five manufacturers/exporters of the subject merchandise to the United States during the period August 1, 1988, through July 31, 1989. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley, Maureen, Price, or Laurie Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1989, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (54 FR 32364). Two respondents review. We initiated the review on September 20, 1989 (54 FR 38712) covering the period August 1, 1988, through July 31, 1989. The Department has conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the **Federal Register** on September 20, 1990 (54 FR 38720).

Scope of the Review

Imports covered by the review are sales or entries of tapered roller bearings (TRBs) four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. During the review period such merchandise was classifiable under item numbers 680.3932, 680.3934, and 680.3938 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers five manufacturers/exporters of TRBs during the period August 1, 1988, through July 31, 1989: Isuzu Motors, Ltd. (Isuzu), Koyo Seiko, K.K. (Koyo), Nachi-Fujikoshi Corporation (Nachi), Nippon Seiko, K.K. (NSK), and Toyota Motor Corporation (Toyota).

United States Price

The Department used exporter's sales price (ESP) for both Koyo and NSK, as defined in section 772 of the Tariff Act, to calculate United States price. ESP was based on the packed, delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, ocean freight, marine insurance, export inspection fees, brokerage and handling, U.S. inland freight, U.S. duty, commissions to unrelated parties, U.S. credit, discounts, rebates, warranties, technical expenses, advertising, third party payments, packing expenses incurred in the United States, and indirect selling expenses (which include inventory carrying costs, warehouse transfer expenses, corporate advertising, rebates, discounts, and selling expenses). No other adjustments were claimed or allowed.

Foreign Market Value

The Department used the home market price for both Koyo and NSK, as defined in section 773 of the Tariff Act, to calculate foreign market value (FMV). If sufficient quantities of the respective such or similar merchandise were not sold in the home market to allow a comparison between the U.S. price and FMV, we used constructed value as the basis for FMW.

In general, the Department relies on monthly weighted-average prices in the calculation of FMW. Because of the significant volume of home market sales involved in the review, and in accordance with section 777A of the Tariff Act, we calculated a weighted-average annual FMV for each model sold by each firm. We determined that annual weighted-average prices were representative of the transactions under consideration by comparing each monthly weighted-average home market price of a model with its annual weighted-average price.

When we used home market sales as the basis of comparison, we based FMV on the packed, F.O.B., ex-factory, or delivered price to related purchasers when an arms-length relationship is demonstrated, or unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, packing, credit, commissions, warranty, and differences in physical characteristics. We adjusted FMV for indirect selling expenses (which include post-sale price adjustments, commissions, rebates, discounts, and advertising) in the home market to offset indirect selling expenses on ESP sales in the United States. We limited the indirect selling expenses deduction on home market sales by the amount of the indirect selling expenses incurred in the United States. We added packing expenses incurred in Japan for U.S. sales to FMV.

Based on petitioner's allegations, we investigated whether Koyo or NSK sold merchandise covered by the finding in the home market at prices below the cost of production. In accordance with section 773(b) of the Tariff Act, we disregarded those sales below the cost production. If all sales of a particular model were disregarded, we used constructed value as the basis of FMV.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included the cost of materials, labor, and factory overhead in our calculations. The actual selling, general and administrative expenses (SG&A) and profit of Koyo were less than the statutory minimums of ten and eight percent, respectively, of the cost of manufacture. Therefore, we used the statutory minimums in our calculations of constructed value. The actual selling, general and administrative expenses (SG&A) of NSK, which were greater than the statutory minimum of ten percent of the cost of manufacture, were used in our calculation of constructed value. However, the actual profit of NSK was less than the statutory minimum of eight percent. Therefore, we used the statutory minimum for profit in our calculation of constructed value.

Best Information Available (BIA)

As a result of extensive problems found in the responses of Isuzu and Toyota for their home market and U.S. sales, the information submitted by these firms in this administrative review is inadequate and unusable. During the home market verification of Isuzu, it was revealed that: due to methodological errors in selecting 0–4 inch TRB sales during the period, home market sales values were underreported by as much as 60% and U.S. sales value was underreported by about 10%; Isuzu incorrectly included the cost of direct shipments in their calculation of inventory days for the inventory carrying cost adjustment on home market sales; Isuzu failed to include adjustments for ocean freight and brokerage for certain purchase price sales; clerical errors were committed in Isuzu's computation of adjustments for export packing and brokerage; and ESP

selling expenses incurred in Japan were understated. During the home market verification of Toyota, it was revealed that Toyota failed to report the majority of its home market sales to the first unrelated customer, as requested in the supplemental questionnaire. Instead, it supplied sales prices to related distributors with a concomitant formula for calculating the sales price that the related distributors charged to the unrelated customer. In the United States, Toyota only reported the transfer price from Toyota, Japan, to its U.S. subsidiary, and once again supplied a formula to calculate the sales price charged to unrelated customers. The margins of Isuzu and Toyota, therefore, are based on the best information available, which is the highest margin found on any analyzed firm in this review.

Nachi reported that it had no shipments of Japanese tapered roller bearings, four inches or less in outside diameter, and certain components thereof, during the period August 1, 1988, through July 31, 1989. The Department confirmed this with the Customs Service.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period August 1, 1988, through July 31, 1989:

Manufacturer/exporter	Margin (percent)
Isuzu Motors, Ltd.	22.99
Koyo Seiko, K.K.	22.99
Nachi-Fujikoshi Corp.	* 18.07
Nippon Seiko, K.K.	2.60
Toyota Motor Corp.	22.99

* No shipments during the period; margin from last review in which there were shipments.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of TRBs from Japan. For any future entries of this merchandise from an exporter not covered in this or any previous review, and who is unrelated to any reviewed firm, a cash deposit of 22.99 percent shall be required. These deposit requirements are effective for all shipments of the covered merchandise entered, or withdrawn from warehouse, for consumption or or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-8596 Filed 4-11-91; 8:45 am—

BILLING CODE 3510-DS-M

Sanctions for Violations of an Administrative Protective Order

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Status of investigation into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

SUMMARY: This is a notice of the status of investigations into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-8916.

SUPPLEMENTARY INFORMATION: The International Trade Administration, U.S. Department of Commerce (ITA), wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to administrative protective order ("APO") during the course of those proceedings. In order that the gravity with which ITA views violations of its APO's might be better appreciated, ITA is publishing the following report on a recent allegation that the provisions of an ITA APO have been violated.

An individual violated an APO by failing to return to the Department upon completion of an administrative proceeding all business proprietary information received pursuant to an administrative protective order. The APO-covered information was not publicly disclosed. By failing to return all business proprietary information, the individual violated the application for access to proprietary information filed by the individual incorporated by reference in the APO.

In this case, the individual involved was: (1) Issued a private reprimand which warned that future violations by him/her or others associated with the law firm would be treated more severely; (2) required to send a letter to counsel for the affected company which explains and apologizes for the circumstances surrounding the violation; (3) required to submit to the ITA a written office plan describing how business proprietary information received under APO would be accounted for in order to ensure that all such materials will be properly returned or destroyed in accordance with the terms of the application for access to proprietary information; and (4) required to attend a training session on procedures for protecting proprietary data.

We consider these sanctions appropriate for the following reasons: First, the violation appears inadvertent, and the error was voluntarily reported to the Department. Second, there appears to be no harm caused by the delayed return of the document because the document was found in a locked cabinet and there appears to be no disclosure of business proprietary information. Third, the individual cooperated with the ITA's preliminary investigation.

Serious harm can result from the failure to return or destroy business proprietary information received under APO upon completion of an administrative process. ITA will continue to investigate vigorously allegations that the provisions of APO's have been breached, and is prepared to impose sanctions commensurate with the nature of the violations, including

letters of reprimand, denial of access to proprietary information, and debarment from practice before the ITA.

This notice is published pursuant to 19 CFR 354.15(e) (1990).

Dated: March 27, 1991.

Roger W. Wallace,

Deputy Under Secretary for International Trade.

[FR Doc. 91-8598 Filed 4-11-91; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of Antidumping or Countervailing Duty Order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than April 30, 1991, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

Antidumping duty proceedings	Period
Canada:	
Sugar and Syrups (A-122-085).	04/01/90-03/31/90
France:	
Sorbital (A-427-001)	04/01/90-03/31/91
Greece:	
Electrolytic Manganese Dioxide (A-484-801).	04/01/90-03/31/91
Italy:	
Spun Acrylic Yarn (A-475-064).	04/01/90-03/31/91
Japan:	
Calcium Hypochlorite (A-588-401).	04/01/90-03/31/91
Cyanuric Acid (A-588-019).	04/01/90-03/31/91
Dichloroisocyanurates (A-588-019)	04/01/90-03/31/91
Trichloroisocyanuric Aid (A-588-019).	04/01/90-03/31/91
Electrolytic Manganese Dioxide (A-588-806).	04/01/90-03/31/91
3.5" Microdisks and Media Thereof (A-588-802).	04/01/90-03/31/91
Roller Chain, Other Than Bicycle (A-588-028).	04/01/90-03/31/91
Spun Acrylic Yarn (A-588-086).	04/01/90-03/31/91
Kenya:	
Standard Carnations (A-779-602).	04/01/90-03/31/91
Mexico:	
Certain Fresh Cut Flowers (A-201-601).	04/01/90-03/31/91
Tawain:	
Color Television Cut Receivers (A-583-009).	04/01/90-03/31/91
The Republic of Korea:	
Color Television Receivers (A-580-008).	04/01/90-03/31/91
COUNTERVAILING DUTY PROCEEDINGS	
Argentina:	
Cold-Rolled Carbon Steel Flat-Rolled Products (C-357-005).	01/01/90-12/31/90
Wool (C-357-002)	01/01/90-12/31/90
Brazil:	
Pig Iron (C-351-062)	01/01/90-12/31/90
Malaysia:	
Carbon Steel Wire Rod (C-557-701).	01/01/90-12/31/90
Mexico:	
Leather Wearing Apparel (C-201-001).	01/01/90-12/31/90
Peru:	
Pompon Chrysanthemums (C-333-601).	01/01/90-12/31/90
Thailand:	
Rice (C-549-503)	01/01/90-12/31/90

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by April 30, 1991.

If the Department does not receive by April 30, 1991 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: April 1, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-8593 Filed 4-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-701]

Carbon Steel Wire Rod From Malaysia; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has conducted two administrative reviews of the countervailing duty order on carbon steel wire rod from Malaysia. We preliminary determine the total bounty or grant to be 0.03 percent *ad valorem* for the review period April 22, 1988—December 31, 1988, and 0.46 percent *ad valorem* for the review period January 1, 1989—December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1989, and April 10, 1990, the Department of Commerce (the Department) published in the **Federal Register** notices of "Opportunity to Request Administrative Review" (54 FR 13211 and 55 FR 13302) of the countervailing duty order on carbon steel wire rod from Malaysia (53 FR 13303; April 22, 1988). On April 14, 1989, the respondents, the Government of Malaysia, Amalgamated Steel Mills Bhd (ASM), Southern Iron & Steel Works Sdn Bhd (SISW), and its related trading company Southern Iron & Steel Trading (SIST) requested that we conduct an administrative review of the order for the period April 22, 1988—December 31, 1988. On April 30, 1990, the petitioners,

Armco Inc., Georgetown Steel Corp., and Raritan River Steel Co., requested that we conduct an administrative review for the period January 1, 1989—December 31, 1989. We published the initiation of the reviews on May 24, 1989 and June 1, 1990 (54 FR 22465 and 55 FR 22366), respectively. The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments from Malaysia of carbon steel wire rod, a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch in diameter, not over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under four cents per pound. Through 1988, such merchandise was classifiable under item numbers 607.1400, 607.1710, 607.1720, 607.1730, 607.2200, and 607.2300 of the *Tariff Schedule of the United States Annotated* (TSUSA). This merchandise is currently classifiable under item numbers 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, and 7213.50.00 of the *Harmonized Tariff Schedule* (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods from April 22, 1988 to December 31, 1988, and from January 1, 1989 to December 31, 1989, and 15 programs. There were three producers/exporters of wire rod in 1988 and one in 1989.

Analysis of Programs

(1) Export Credit Refinancing

The Bank Negara Malaysia, the central bank of Malaysia, provides short-term export credit refinancing through commercial banks. The Export Credit Refinancing (ECR) program provides order-based pre-shipment or post-shipment financing of exports for periods of up to 120 and 180 days, respectively, and "Certificate of Performance" (CP) based pre-shipment financing. Order-based financing is granted for specific exports to specific markets. CP-based financing is a line of credit based on the previous 12 months' export performance and cannot be tied to specific exports to specific markets. Because only exporters are eligible for ECR loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

In order to determine whether these loans were provided at preferential rates, we compared the interest rate charged to a benchmark interest rate. As a benchmark for short-term loans, it is our practice to use the most comparable, predominant commercial rate for short-term financing. For purposes of this determination, we are using the 90-day Bankers' Acceptance (BA) discount rate as the most comparable and commonly used alternative source of short-term financing. Based on this comparison, we find that ECR loans are provided at substantially lower rates and therefore are countervailable.

Of the three respondents, only ASM received CP-based ECR financing during either review period. To calculate the benefit, we first adjusted the BA discount rate taking into account the cost of pre-payment of interest. We then calculated the interest rate differential between the ECR rate paid on all ECR loans outstanding in 1988 and 1989 and the adjusted average BA rate. We then multiplied the amount repaid on each loan by the number of days each payment was outstanding and by the interest rate differential to derive the total benefit per payment in Malaysian ringgit. We divided the total benefit by total exports to all countries (since the CP-based loans are not shipment specific) for both respective review periods. Where appropriate, we weight-averaged the result by ASM's share of Malaysian total exports of subject merchandise. On this basis, we calculated a bounty or grant of 0.03 percent *ad valorem* for the 1988 review period, and 0.46 percent *ad valorem* for the 1989 review period.

(2) Pioneer Status Under the Promotion of Investments Act of 1986

In accordance with the Promotion of Investments Act of 1986, which replaced the Investments Incentives Act of 1968, pioneer status is available to companies producing a product (1) not currently produced in Malaysia, (2) favorable to further development and/or export, and (3) suitable to the public interest or economic development of Malaysia. Benefits granted under pioneer status include exemptions from the following on the portion of income derived from sales of the pioneer product: (1) The 40 percent corporate income tax, (2) the five percent development tax, (3) the three percent excess profits tax, and (4) the 40 percent dividend tax. Pioneer status benefits are orginally granted for five years, with a possible extension of up to five additional years. ASM was a participant in the pioneer program until 1987 and benefits accrued under this program can be carried forward indefinitely.

In order to determine whether benefits from the pioneer program are provided to a specific enterprise or industry, or group of enterprises or industries, in accordance with section 771(5)(B) of the Tariff Act, we have considered four factors: (1) The extent to which the Malaysian government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of the pioneer program; (2) the number of enterprises, industries, or groups thereof that actually use the pioneer program; (3) examination of any disproportionate or dominant users of the pioneer program; and (4) the extent and manner in which the government exercises discretion in making the pioneer program available. *See Preliminary Results of Countervailing Duty Administrative Review: Live Swine from Canada* (56 FR 5676; February 12, 1991).

With respect to the first factor, the language in the Promotion of Investments Act of 1986 does not limit pioneer benefits to any specific industries or companies. For example, part II, chapter 1, section 5(1) of this act states, "Any company * * * being desirous of establishing or participating in a promoted activity or of producing a promoted product and intending that a factory be constructed, or where the factory is already in existence, be occupied [sic] in Malaysia for that purpose, may make an application in writing to the Minister for pioneer status * * *." Thus we find that the Malaysian government did not *de jure* act to limit the availability of the pioneer program.

With respect to the second and third factors, at verification the Malaysian Industrial Development Authority (MIDA) provided us with documents listing all the pioneer contracts awarded from 1975–1989 and all the products that said pioneer contracts cover. From 1975–1979, 56 percent of all applicants for pioneer status received benefits, and we found no evidence to indicate that the administration of the program had changed during the 1980s. In addition, pioneer benefits have been approved for over two thousand companies and almost as many products cutting across numerous industrial sectors for the period 1980–1989. Because we found a substantial number of users in all industries, we find that no industry or group of industries used the pioneer program disproportionately.

With respect to the fourth factor, in *Final Affirmative Countervailing Duty*

Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Malaysia (53 FR 13303; April 22, 1988), we found the pioneer program to be specific and countervailable because, during our verfication in the investigation, we were not able to review documents pertaining to the approval or rejection of applications for this program and were therefore unable to determine that the provision of pioneer status is non-discretionary. However, during verification for the 1988 review period, the Government of Malaysia provided information documenting the general criteria and the process by which it judges applications for pioneer benefits. We reviewed a list of 13 case files of industries selected at random by MIDA as samples of the pioneer approval process. Upon examination, the selection criteria used matched the criteria given to use by MIDA. We then requested and were granted access to two other company files chosen at random. Based on our analysis of these files, we concluded that the MIDA selection criteria were applied objectively.

Based on our analysis of the four specificity criteria, we determine that pioneer status is not limited to a specific enterprise or industry, or group of enterprises or industries, and therefore is not countervailable under section 771(5)(B) of the Tariff Act.

(3) Accelerated Depreciation Allowance

The Income Tax Act of 1967, as amended, provides for accelerated depreciation of assets in manufacturing, processing, and other industries. Under this program, the Malaysian government set the annual allowance at 40 percent of qualifying plant and machinery expenditures. Taken with the 20 percent initial allowance, this rate allows a company to completely depreciate an asset in two years. SISW accrued a benefit under this program during the 1988 period of review. In *Final Negative Countervailing Duty Determination; Standard Pipe, Line Pipe, Light-walled Rectangular Tubing, and Heavy-walled Rectangular Tubing from Malaysia* (53 FR 46904; November 21, 1988), we examined the Accelerated Depreciation Allowance for the 1987 review period and determined that it is not countervailable because it is not limited to a specific enterprise or industry, or group of enterprises or industries. We have received no new information in the course of this review to alter that determination.

(4) Other Programs

We examined the following programs and preliminarily determine that exporters of wire rod did not benefit from them with respect to exports to the United States during either review period:

a. Abatement of Taxable Income Based on the Ratio of Export Sales and of Five Percent of the Value of Indigenous Materials Used in Exports;

b. Allowance of a Percentage of Net Taxable Income Under Section 29 of the IIA of 1968;

c. Allowance of Taxable Income of Five Percent for Trading Companies Exporting Malaysian-made Products;

d. Double Deduction for Export Credit Insurance;

e. Double Deduction for Export Promotion;

f. Industrial Building Allowance;

g. Export Insurance Program;

h. Long-term Loans from the Industrial Development Bank of Malaysia (IDBM);

i. Long-term Loans from the Development Bank of Malaysia (DBM);

j. Investment Tax Credit/ Investment Tax Allowance

k. Reinvestment Allowances

l. Reduction in the Cost of State Land for New Industry and Agriculture.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.03 percent *ad volorem* during the period April 22, 1988–December 31, 1988, and 0.46 percent *ad volorem* during the period January 1, 1989–December 31, 1989. In accordance with 19 CFR 355.7, any benefit less than 0.50 percent *ad valorem* is *de minimis*.

The Department intends to instruct the Customs Service to liquidate without regard to countervailing duties all shipments of Malaysian wire rod exported on or after April 22, 1988 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to waive the collection of a cash deposit of estimated countervailing duties on all shipments of Malaysian wire rod entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final reuslts of this review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the publication date of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: April 5, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–8697 Filed 4–11–91; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

Docket Number: 91–043. *Applicant:* Department of Veterans Affairs Medical Center, 113 Holland Avenue, Albany, NY 12208. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Hitachi/Nissei Sangyo America, Japan. *Intended Use:* The instrument will be used for studies of both biological tissue and inorganic materials such as asbestos, silicon and calcified particles in research to understand the biological processes and what factors have an impact on the course of these processes. In addition, the instrument will be used for training

individuals to use the microscope as a diagnostic and research tool. *Application Received by Commissioner of Customs:* February 26, 1991.

Docket Number: 91–044. *Applicant:* Penn State University, 106 Palleson Building, University Park, PA 16802. *Instrument:* Two (2) Insect Suction Traps, Model Johnson & Taylor 9". *Manufacturer:* Burkard Manufacturing Co., Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of movement and activity of adult pear thrips, an insect pest, in order to develop management strategies for these pests in sugar maple stands and northern hardwood forests. The instruments will also be used as a part of graduate student research (ENT 600) and will be available to other students and faculty in the future. *Application Received by Commissioner of Customs:* February 27, 1991.

Docket Number: 91–045. *Applicant:* Arizona State University, Department of Botany, Tempe, AZ 85287. *Instrument:* Measuring Gas Cooler Unit/Dew-Point Mirror Measuring Head. *Manufacturer:* Heinz Walz GmbH, West Germany. *Intended Use:* The instrument will be used in a fumigation study with the following objectives.

(1) Gaining knowledge about the uptake dynamics of gases by lichens.

(2) Establishing the dependency of uptake dynamics on and sensitivity of different lichen species to different water contents.

(3) Screening for the sensitivity of lichen species for monitoring and protection purposes.

In addition, the instrument will be used for educational purposes in the course Plant Ecology and Plant Ecophysiology. *Application Received by Commissioner of Customs:* February 27, 1991.

Docket Number: 91–046. *Applicant:* University of California, Santa Barbara, Marine Science Institute, Santa Barbara, CA 93106. *Instrument:* Automated ^{15}N and ^{15}C Analysis, Mass Spectrometer System, Tracermass 78–00000. *Manufacturer:* Europa Scientific, United Kingdom. *Intended Use:* The instrument will be used to measure the ratios and contents of the stable isotopes of nitrogen and carbon in small samples of biological materials which consist of marine invertebrates, bacteria and plant material. The studies will focus on deep-sea animals or other open ocean organisms requiring that the analyses be performed onboard a research vessel at sea. In addition, the instrument will be used for educational purposes in the courses Biology 596—Directed Reading and Research and Zoology 143L—Laboratory in Ecological Physiology. *Application Received by Commissioner of Customs:* February 28, 1991.

Docket Number: 91–047. *Applicant:* Ball State University, 2000 University Avenue, Muncie, IN 47306. *Instrument:* Electron Microscope, Model H–600–3. *Manufacturer:* Nissei Sangyo, Japan. *Intended Use:* The instrument will be used for the examination of biological materials in the following investigations:

(1) The study of the cytoskeleton in developing amphibian oocytes, with particular interest in the role the cytoskeleton has in positioning cytoplasmic determinants,

(2) The study of the pigmented epithelial cells of the retina in normal and RCS rats in order to characterize the molecular events leading to the development of retinitis pigmentosa, and

(3) Localization of proteins important in the process of photosynthesis in cyanobacteria.

The instrument will also be used in the instruction of a course entitled Electron Microscopy (Sci. 501). *Application Received by Commissioner of Customs:* February 28, 1991.

Docket Number: 91–048. *Applicant:* U.S. Geological Survey, Western Region, 345 Middlefield Road, M/S 434, Menlo Park, CA 94025. *Instrument:* CO_2-Water Equilibration Device with Supporting Hardware and Software. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* The instrument will be used for analysis of oxygen isotope ratios in water. *Application Received by Commissioner of Customs:* March 7, 1991.

Docket Number: 91–049. *Applicant:* University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024–1567. *Instrument:* Mass Spectrometer, Model IMS 1270. *Manufacturer:* Cameca S.A., France. *Intended Use:* The instrument will be used in a wide range of investigations in isotope and trace element geochemistry, cosmochemistry, biology and materials science. These investigations will be primarily *in situ* analyses of trace element concentrations and precise isotopic ratio abundances in geological, biological and synthetic materials. Samples will consist of : (a) Polished sections of terrestrial rocks and minerals, (b) meteorites or synthetic minerals and glasses, (c) unpolished single microscopic grains of interplanetary or interstellar dust, (d) residues of chemically processed rocks or minerals, (e) freeze-dried biological tissue and (f) materials of technological importance (such as metals, semiconductors, or high-critical-temperature superconductors). *Application Received by Commissioner of Customs:* March 19, 1991.

Docket Number: 91–050. *Applicant:* University of Arizona, Copper Research Center, 4717 E. Ft. Lowell Road, East Building, Tucson, AZ 85712. *Instrument:* Electron Microscope, Model H–8000 NAR. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument will be used for studies of non-biological specimens, ores, ceramics, metals, glass, polymers and composites. The primary objective of these studies is the complete characterization of materials and material properties with the purpose of engineering suitable materials for future technologies. In addition, the instrument will be used in courses to train students in electron microscopy techniques. *Application received by Commissioner of Customs:* March 19, 1991.

Docket Number: 91–051. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* X-Ray Streak Camera System. *Manufacturer:* Kentech Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the time history of x-rays that are generated when a metal target generates x-rays. *Application Received by Commissioner of Customs:* March 19, 1991.

Docket Number: 91–052. *Applicant:* The Johns Hopkins University, 34th and Charles Streets, Baltimore, MD 21218. *Instrument:* Differential Scanning Microcalorimeter, Model DASM–4M. *Manufacturer:* NPO Biopribor, USSR. *Intended Use:* The instrument will be used for experiments that will involve obtaining excess heat capacity profiles, often by surveying a variety of experimental conditions. The objectives of this research are to provide experimental data of sufficient quality to aid in directing the development of a more thorough understanding of molecular-level thermodynamic and mechanistic details relating the structural energetics of biological molecules with regulation of their function. *Application Received by Commissioner of Customs:* March 19, 1991.

Docket Number: 91–053. *Applicant:* Texas A&M University, Cyclotron Institute, College Station, TX 77843–3366. *Instrument:* Charged Particle Magnetic Spectrometer, Model K315. *Manufacturer:* University of Oxford, United Kingdom. *Intended Use:* The instrument will be used to study the nuclear structure of atoms over essentially the entire range of naturally occurring atomic species. The properties to be investigated will range from simple reaction probabilities to detailed investigation of nuclear reaction

mechanisms. *Application Received by Commissioner of Customs:* March 20, 1991.

Docket Number: 91–054. *Applicant:* The University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, TX 78284. *Instrument:* Manipulators and Microforge for Patch Electrodes. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* The instrument will be used to record synaptic currents from hippocampal or striatal neurons maintained in tissue culture. Electrical activity from pairs of neurons will be recorded to determine the properties of this synaptic transmission. Experiments will be conducted to determine modulatory influences upon synaptic communication between indentified neurons. *Application Received by Commissioner of Customs:* March 22, 1991.

Docket Number: 91–055. *Applicant:* New York State Department of Health, Empire State Plaza, P.O. Box 509, Albany, NY 12201–0509. *Instrument:* Electron Microscope, Model EM 910. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for studies of biological cellular components, including cell membranes, ribosomes, enzyme complexes, and intact microbial pathogens and cultured cells. Experiments will be conducted to define the 3-dimensional structure of the biological systems under study, with the goal of understanding how these systems perform their biological function and elucidate the interactions of microbial pathogens and their host cells which lead to the causes of the diseased state. *Application Received by Commissioner of Customs:* March 22, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–8698 Filed 4–11–91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing the blind or other severely handicapped.

EFFECTIVE DATE: May 13, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On February 22, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 7345) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, Federal Center, Buildings 607 and 624, Walla Walla, Washington

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–8691 Filed 4–11–91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 13, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Bottom Assembly, Crew Berth
1680–00–677–2060

Services

Commissary Shelf Stocking and Custodial, Fort Bliss, Texas
Janitorial/Custodial, Federal Building, 2800 Cottage Way, Sacramento, California
Janitorial/Custodial, Jackson Federal Building, Seattle, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–8692 Filed 4–11–91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report for a Permit Application for Proposed Activities at Bolsa Chica, Orange County, CA

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement/ environmental impact report (DEIS/EIR) in compliance with section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899, as amended, for activities proposed by the permit applicant at Bolsa Chica, California, requiring Federal permit action and as described below.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is considering an application for section 404 and section 10 permits to conduct dredge and fill activities to implement proposed wetlands restoration and residential development at Bolsa Chica, California. Bolsa Chica, approximately 1,670 acres, is located in the northwestern coastal section of unincorporated Orange County in southern California. It is within the sphere of influence of the City of Huntington Beach (City) and the City is considering its annexation. Bolsa Chica is surrounded by residential development on the north, east and southeast and the Pacific Ocean and Bolsa Chica State Beach on the southwest. The area features two upland mesas, the Bolsa Chica Mesa in the northern portion and the Huntington Mesa in the southern portion, with lowlands and wetlands in between. A 300-acre State Ecological Reserve is located within the area, of which about 170 acres have been restored, and oil production facilities are located throughout much of lowlands and wetlands. Activities have been proposed which would involve the dredging and filling of portions of the 1,312.4-acre Bolsa Chica lowlands which includes approximately 927 acres of "Waters of the United States" as defined in the Clean Water Act and determined by the EPA in February 1989. However, the applicant's permit request is on 916 acres of Water of the United States.

The permit applicant has proposed that the dredging and filling of materials within jurisdictional areas of the Bolsa Chica lowlands as a part of a reconfiguration of the lowlands to enable the non-jurisdictional areas to be developed and wetlands to be restored as a part of a major wetlands restoration program. The proposed project includes the consolidation, restoration and enhancement of degraded wetlands and creation of new wetlands from on-site nonjurisdictional areas providing for the protection of approximately 1,020 acres of wetlands within the existing lowland area. Also included are residential construction on 101 acres of degraded wetlands, regional infrastructure improvements construction on 20.9 acres of jurisdictional wetlands, and the potential construction of a new tidal inlet across Pacific Coast Highway and through Bolsa Chica State Beach.

The primary Federal concern is that these proposed activities involve the dredging and filling of materials within Federal jurisdictional waters and may have a significant impact on the human environment. Therefore, in accordance with the National Environmental Protection Act (NEPA), the Corps is requiring the preparation of an Environmental Impact Statement (EIS) before it considers appropriate permit actions. Pursuant to the California Environmental Quality Act (CEQA), the City is required to prepare an Environmental Impact Report (EIR) for certification and implementation of the Bolsa Chica Specific Plan/Local Coastal Program (LCP) currently being proposed by the City. The Corps and the City have agreed to jointly prepare a Draft EIS/EIR in order to optimize efficiency and avoid duplication. The Draft EIS/EIR is intended to be sufficient in scope to address the Federal requirements and environmental issues concerning the proposed activities and permit application and the State and local environmental requirements for their respective permit approvals.

ISSUES: There are many potentially significant environmental issues that will be addressed in the EIS/EIR. These issues include:

a. Geological issues including subsidence, seismic concerns, and landform alteration.
b. Impacts to surface and groundwater hydrology including water quality.
c. Impacts to terrestrial, aquatic (including wetland) and marine biological resources.
d. Impacts to prehistoric and historic cultural resources.
e. Air quality impacts.
f. Transportation and traffic circulation impacts.
g. Noise impacts (e.g., recreation, public access, shoreline use and energy production).
h. Land use impacts.
i. Public services and utilities impacts.
j. Socioeconomic concerns including population, housing and infrastructure costs and benefits.
k. Impacts to aesthetics resources.
l. Oceanography and fishing impacts.
m. Cumulative impacts.
n. Growth inducement.
o. Public health and safety.

ALTERNATIVE PLANS: A wide range of alternatives are possible for development and/or restoration of the Bolsa Chica wetlands and associated uplands. The EIS/EIR will consider a wide range of alternatives. Alternatives will be further identified, developed, and screened as a result of input received during the scoping process. Major alternatives initially identified are described below:

1. *Alternative 1 (Preferred Action).* This alternative embodies the Bolsa Chica Planning Coalition Concept Plan of May 1989 and includes the following major components:

a. Acquisition, reconfiguration consolidation, restoration and enhancement of degraded wetlands and creation of new wetlands from on-site non-jurisdictional areas resulting in a total wetlands area of approximately 1,020.6 acres. This alternative also includes construction of a tidal inlet.

b. Residential construction on a consolidated parcel of property in the Bolsa Chica Lowland. Approximately 101 acres of jurisdictional wetlands would be filled for this use.

c. Construction of lowland infrastructure improvements including a "Cross Gap" connector roadway and improvements to the Wintersburg Flood Control Channel. Approximately 20.9 acres of jurisdictional wetlands would be filled for the connection.

d. Residential development on the Bolsa Chica Mesa and MWD parcel of approximately acres.

e. Construction of a linear regional park on approximately 70.2 acres are included in the Bolsa Chica study area and constitutes only part of the larger 106 acre linear regional park along Huntington Mesa linking Huntington Central Park and Bolsa Chica State Beach.

This alternative also includes two major components that were not part of the Bolsa Chica Planning Coalition Concept Plan but which are part of the proposed LCP, as follows:

f. Residential development on approximately 3.5 acres of the Huntington Mesa.

e. Residential development on an additional 11.6 acres on the Bolsa Chica Mesa.

Total residential development of up to 5,700 units may be permitted in this alternative.

2. *Alternative 2.* Wetlands restoration and residential development at higher densities within the mesas, MWD and lowland areas than proposed under Alternative 1 resulting in construction of up to 7,300 residential units. The "Cross Gap" connector roadway may be constructed with this alternative.

3. *Alternative 3.* Wetlands restoration on the Bolsa Chica lowland and areas known as the MWD parcel and residential development on the Huntington Mesa and Bolsa Chica Mesa only. No construction would occur in the wetlands. A maximum of 3,500 residential units would be analyzed under this alternative.

4. *Alternative 4.* Wetlands restoration and construction of residential units on the Bolsa Chica Mesa and Huntington Mesa only. A "Cross Gap" connector would not be constructed in this alternative. A maximum of 2,500 residential units may be allowed under this alternative.

5. *Alternative 5.* Wetlands restoration and construction of a regional park in

the Bolsa Chica lowlands and development of up to 5,700 units on the Bolsa Chica Mesa and Huntington Mesa and the area known as the MWD parcel. This alternative will be analyzed with and without the Cross Gap Connector.

6. *Alternative 6.* Preservation in situ of the wetlands and other waters of the United States as identified by the Environmental Protection Agency (EPA) in its 1989 wetlands determination. Development of residential and infrastructure uses on the non-wetland areas in the lowlands depicted on the EPA jurisdictional map may be possible. Development of the Bolsa Chica Mesa and Huntington Mesa may also occur in this alternative. Up to 5,700 residential units will be analyzed in this alternative.

7. *Alternative 7.* This alternative would result in no annexation in the City, but the property remaining in the County of Orange with land uses regulated by the County's 1986 Land Use Plan and would include a navigable ocean entrance, public marina, commercial uses, residential uses and wetlands restoration. Up to 5,700 residential units will be analyzed in this alternative.

8. *Alternative 8.* Wetlands restoration of the entire wetlands area and either retention of Bolsa Chica Mesa and Huntington Mesa in its existing openspace state or development of uplands as parkland. No residential development would be associated with the proposed action.

9. *Alternative 9.* Commercial uses could be included in place of or in addition to some of the residential development in Alternatives 1 through 8.

10. *Alternative 10.* Resort hotel developments or dense multifamily development (high rise) could occur on the Huntington Beach or Bolsa Chica Mesas with portions of the mesas retained in openspace. Wetlands would be restored under this alternative.

11. *Alternative 11.* This alternative would be the same as the proposed action described under Alternative 1 except marsh restoration would be limited only to the acreage necessary to compensate for filling of 101 acres associated with residential development and 20.9 acres associated with infrastructure development.

12. *Alternative 12 (NEPA no action alternative).* This alternative would involve no alternation of Waters of the United States. Therefore, no construction in jurisdictional areas nor marsh restoration would occur. Development within non-jurisdictional areas on the mesas could occur.

13. *Alternative 13 (CEQA no project alternative).* This alternative would result in no actions being taken at Bolsa Chica. No wetlands restoration or residential/commercial development would occur.

In addition to development alternatives, several wetland restoration methods are possible and will be considered in various configurations along with the alternative plans. These could include:

- Full tidal restoration with construction of a tidal inlet.
- A muted tidal restoration without construction of a tidal inlet.
- Alternative restoration plans which would allow a greater extent of freshwater or brackish marshes.
- No restoration.

SCOPING PROCESS: A public meetings will be held to receive public comment and assess public concerns regarding the appropriate scope and preparation of the Draft EIS/EIR. Participation in the public meeting by Federal, State and local agencies, and other interested organizations and persons is encouraged.

TIME AND LOCATION OF SCOPING MEETING: The public scoping meetings for the Draft EIS/EIR will be held at the lower level of the City of Huntington Beach City Hall, 2000 Main Street, Huntington Beach, CA on Tuesday, April 23, 1991 between 2 to 5 p.m. and 7 to 10 p.m.

ADDRESSES: Comments and questions regarding scoping of the Draft EIS/EIR may be addressed to U.S. Army Corps of Engineers, Los Angeles District, ATTN: Mr. Ron Ganzfried, CESPL-PD-RQ, P.O. Box 2711, Los Angeles, California 90053-2325, or by telephone at (213) 894-6079; or City of Huntington Beach, ATTN: Ms. Laura Phillips, 2000 Main Street, Huntington Beach, California 92648, or by telephone at (714) 536-5270.

AVAILABILITY OF THE DRAFT EIS/EIR: The Draft EIS/EIR is expected to be published and circulated in winter 1991-92 and a Public Hearing held after its publication.

Dated: April 8, 1991.

Charles S. Thomas,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 91-8693 Filed 4-11-91; 8:45 am]

BILLING CODE 3710-KF-M

DEPARTMENT OF EDUCATION

Executive Committee of the National Assessment Governing Board; Teleconference

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portion of the meeting.

DATE: April 25, 1991.

TIME: 11 a.m. (e.d.t.) to 12 p.m. (closed); 12 p.m. until adjournment (open).

LOCATION: National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, 20005-4013. Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297) (20 USC 1221e-1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on April 25, 1991 from 11 a.m. (e.d.t.) until the completion of business. A portion of the meeting will be closed from 11 a.m. to 12 p.m. During the closed portion, the Committee will review the qualifications of individuals recommended to provide technical assistance to the Board. Discussion during the closed portion will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal

privacy. Such matters are protected under exemption (6) of 5 U.S.C. 552b(c). Beginning at 12 p.m., the Executive Committee will continue the teleconference in open session to review and approve the agenda for the May meeting of the National Assessment Governing Board. Because this is a teleconference meeting, facilities will be provided so the public will have access to the open portion of the Committee's deliberations.

A summary of the activities at the closed session and related matters, which are informative to the public consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, Washington, DC, from 8:30 a.m. to 5:30 p.m.

Dated: April 5, 1991.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91-8590 Filed 4-11-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 90-92-NG]

Sumas Energy, Inc., Conditional Order Granting Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of conditional order to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting Sumas Energy, Inc. (SEI), authorization to import from Canada, on a firm basis, up to 5 Bcf of natural gas per year over a 20-year term commencing approximately October 1991. SEI would import the gas over the proposed new Sumas Pipeline-USA facilities, near Sumas, Washington.

Final approval of this import authorization is conditioned on DOE's completion of its responsibilities under the National Environmental Policy Act of 1969 regarding the proposed new pipeline facilities, and a reexamination of the import arrangement at that time.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-8670 Filed 4-11-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 5090-005]

City of Idaho Falls, ID; Intent to Hold Public Scoping Meetings in Shelley and Boise, Idaho, Regarding the Proposed Shelley Hydroelectric Project

April 5, 1991.

Environmental information and mitigative measures have been developed for the Shelley Hydroelectric Project since the Commission's staff issued the final Scoping Document, dated March 14, 1988. The Commission's staff, therefore, has decided to conduct additional scoping sessions prior to preparing the Draft Environmental Impact Statement (DEIS) for that project.

Staff has scheduled: (1) A public scoping session from 7 to 10:30 p.m. on Wednesday, May 8, 1991, at the Senior Citizens Center, located at 193 West Pine Street in Shelley, Idaho 83274; and (2) a technical session for resource agency personnel and other interested parties from 1 to 4 p.m. on Thursday, May 9, 1991, at the Trophy Room, in the Idaho Department of Fish and Game headquarters building, located at 600 South Walnut Street in Boise, Idaho 83702.

At the scoping meetings, which will be recorded by an official stenographer, the Commission's staff will provide its preliminary evaluation of the site-specific and cumulative environmental consequences of constructing and operating the Shelley Hydroelectric Project. These environmental impacts are delineated in a revised Scoping Document 1, which was mailed to interested agencies and individuals in early April 1, 1991.

The scoping meetings will include opportunities for resource agency peronnel and other interested persons to provide: Information concerning the project area's existing physical, biological, and social environments; date and reports that may assist in the evaluation of significant environmental issues; and recommendations to protect or mitigate environmental impacts resulting from the construction and operation of the proposed project. Meeting participants, however, will not be permitted to present diatribes either for or against existing or proposed hydropower developments on the Snake River. Statements on the merits of the Shelley Hydroelectric Project may be provided to the Commission during the public comment period following the issuance of staff's DEIS.

For further information, please contact the FERC environmental coordinator, Jim Haimes at (202) 219-2780.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8630 Filed 4-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT91-13-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 4, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on February 15, 1991, pursuant to section 4 of the Natural Gas Act, and the Commission's regulations governing the electronic submission of tariffs, 18 CFR 385.2011(b)(1989), filed six (6) copies of the substitute tariff sheets listed in appendices "A" and "B" to its FERC Gas Tariff Third Revised Volume No. 1.

Algonquin states that it is making this instant filing in order to incorporate into Algonquin's Third Revised Volume No. 1, tariff sheets that have been filed with the Commission as revisions to Second Revised Volume No. 1 prior to the Commission's January 31, 1991 letter order accepting Algonquin's Third Revised Volume No. 1 and to correct language that was either inadvertently included or excluded from Third Revised Volume No. 1. Algonquin states that it is proposing an effective date of February 1, 1991, the same effective date as Third Revised Volume No. 1.

Algonquin notes that copies of this filing were served upon each of Algonquin's sales and transportation customers, customers served under the terms of Volume No. 2 and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the

Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-8628 Filed 4-11-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3920-7]

Request for Nominations of Candidates for the National Environmental Education Advisory Council

SUMMARY: On November 16, 1990, President Bush signed into law the National Environmental Education Act (Pub. L. 101-619). Section 9 (a) and (b) of the law mandates a National Environmental Education Advisory Council to advise, consult with, and make recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters relating to the activities, functions, and policies of EPA under the new law. EPA is requesting nominations of candidates for membership on the Council. The law requires that the Council be composed of 11 members appointed by the Administrator of EPA, after consultation with the Secretary of the U.S. Department of Education. Members will represent a balance of perspectives, professional qualifications, and experience as specified under the law. Members will be chosen who represent the following:

- Primary and secondary education (one of whom shall be a classroom teacher)—two members.
- Colleges and universities—two members.
- Not-for-profit organizations involved in environmental education—two members.
- State departments of education and natural resources—two members.
- Business and industry—two members.
- Senior Americans—one member.

The 11 members will be chosen to represent the various geographic regions of the country, and the Council will have minority representation. It will also include members with scientific, policy, and other appropriate professional backgrounds.

DATES: Nominations of candidates to serve on the Council must be submitted no later than May 31, 1991. Any interested person or organization may submit nominations of qualified persons. The nominations should include a resume and/or other appropriate information that highlights the individual's background, experience, and qualifications. EPA will not formally acknowledge or respond to nominations.

ADDRESSES: Submit nominations to Kathleen MacKinnon, Office of Environmental Education (A-107), U.S. EPA, 401 M Street, SE., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kathleen MacKinnon at the above address, or call (202) 382-4484.

SUPPLEMENTARY INFORMATION: The Council will provide the Administrator with advice and recommendations on how EPA implements the new environmental education law. In general, the new law is designed to increase public understanding of environmental problems and to improve the training of environmental professionals. EPA will achieve these goals, in part, by awarding grants and/or establishing partnerships with States, not-for-profit organizations, local education agencies, universities, and the private sector to encourage and support environmental education and training programs. EPA will also provide for Federal agency college student internships and in-service teacher fellowships. The Council will also be responsible for preparing a national bi-annual report to Congress that will, among other things, describe and assess the extent and quality of environmental education, discuss major obstacles to improving environmental education, and identify skill, education, and training needs for environmental professionals.

Members of the Council shall receive compensation and allowances at a rate to be fixed by the Administrator. Compensation shall be made to members while attending meetings or otherwise engaged in business of the Council and for travel expenses. Each member of the Council shall hold office for a three year period, except that the terms of office for the first Council shall expire from between one to three years as designated by the Administrator at the time of appointment.

Dated: April 4, 1991.

Lewis S.W. Crampton,

Associate Administrator, Office of Communications and Public Affairs.

[FR Doc. 91-8674 Filed 4-11-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3921-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 25, 1991 through March 29, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991.

Draft EISs

ERP No. D-AFS-K61118-CA Rating EC2, Mt. Reba Ski Area Expansion, Stanislaus National Forest, Special Use Permit, Calaveras Ranger District, Alpine County, CA.

Summary: EPA expressed environmental concerns regarding the cumulative impact of the Mt. Reba project and at least five other ski resort expansions or development on Forest Service lands that would serve the northern California ski market. EPA requested that the Stanislaus, Tahoe and Eldorado National Forests work with the Forest Service regional office to assess the cumulative impacts of the ski resort actions and market feasibility of this expansion level. EPA also requested that an air quality study be performed prior to construction to determine if the Federal air quality standard for carbon monoxide will be violated by the project's increased traffic.

ERP No. D-AFS-K67010-CA Rating EC2, Gillibrand Soledad Canyon Mining Operations Management Plan, Implementation, Angeles National Forest, Los Angeles County, CA.

Summary: EPA expressed environmental concerns regarding potential impacts to air and water quality and to riparian habitats. The final EIS should contain more information on water resources air quality standards and air permits, and monitoring and mitigation.

ERP No. D-IBR-K31016-CA Rating EC2, Lake Cachuma Enlargement and Bradbury Dam Safety Modifications,

Implementation, Section 404 Permit, Santa Barbara County, CA

Summary: EPA expressed concerns about potential project impacts to water quality and protected beneficial uses, especially the steelhead trout fishery. EPA recommended that future project planning incorporate the results of a California Study on the protection and restoration of the steelhead trout fishery.

ERP No. D-UAF-K11045-00 Rating EC2, Tonopah Test Range 37th Tactical Fighter Wing Relocation and other Tactical Force Structure Actions at Holloman and Nellis AFB, Nye County, NV.

Summary: EPA expressed environmental concerns because the total air emissions from the proposed project may have adverse impacts on Clark County, Nevada's air quality and on efforts to attain Federal air quality standards. EPA stated there was insufficient information in the draft EIS to accurately assess the project's compliance with the Clean Air Act. EPA asked for more detailed information on sources of hazardous substances contamination at the air bases, hazardous waste minimization, solid waste recycling, drinking water quality, and endangered species impacts.

ERP No. DS-UMT-L40114-OR Rating EC2, Westside Corridor Mass Transit and Highway Improvement, Updated Alternatives, Funding, City of Portland, Beaverton, Hillsboro, Multnomah and Washington Counties, OR.

Summary: EPA has environmental concerns about the possible direct effects to wetlands and indirect effects of development to water quality, wetland and wildlife habitat.

ERP No. D1-UMT-G54001-TX Rating EC2, Priority Corridor Transportation Improvement, Houston Texas Urbanized Area, METRO Phase 2 Mobility Plan, Funding, Harris County, TX.

Summary: EPA expressed environmental concerns and requested that the final EIS provided additional information on air quality impacts and provide a conformity determination.

Final EISs

ERP No. F-BLM-K61100-AZ, Arizona Strip District, Land and Resource Management Plan, Implementation, Mohave and Coconino Counties, AZ.

Summary: EPA noted that several issues it raised on the draft EIS were not addressed in the final EIS. EPA requested that the Record of Decision contain a commitment that BLM will coordinate water quality planning and compliance with Arizona water quality standards, and that future site-specific projects that could affect groundwater, surface water, fish and wildlife and other natural resources be fully coordinated with Federal and State natural resource agencies. ERP No. F-USA-E11023-MS, Camp Shelby Annual Training Facilities, Construction, Implementation, Forrest, Perry, and Greene Counties, MS.

Summary: EPA believes the environmental consequences of upgrading training facilities at Camp Shelby, MS appear to be within acceptable limits, there is a need for on-going monitoring to insure that this proves to be the case. An interagency work group has been proposed to oversee the noted mitigation measures in this regard.

Dated: April 9, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR. Doc. 91-8700 Filed 4-11-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3921-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5076 or (202) 382-5073. Availability of Environmental Impact Statements Filed April 1, 1991 through April 5, 1991 Pusuant to 40 CFR 1506.9.

EIS No. 910099, DRAFT EIS, COE, FL, Central and Southern Florida Project, Flood Control and Canal 51-West End, Control Structures 155A, 360, Pump Station 319 and Levee Construction, Implemenation, Palm Beach County, FL, Due: May 27, 1991, Contact: William J. Fonferek, (904) 791-1690.

EIS No. 910100, FINAL EIS, AFS, MT, White Stallion Timbert Sale Management, Implementation, Darby Range District, Bitterroot National Forest, Ravalli County, MT, Due: May 13, 1991, Contact: Tim Trotter, (406) 821-3913.

EIS No. 910101, FINAL EIS, AFS MT, Bitterroot National Forest Noxious Weed Control Program, Herbicide Use on Eight Sites, Implementation, Ravalli County, MT, Due: May 13, 1991, Contact: John Losensky, (406) 329-3819.

EIS No. 910102, DRAFT EIS, BLM, CA, Hayden Hill Open Pit Heap Leach Gold and Silver Mine Project, Construction and Operation, Mining Plan of Operations, Ancillary Right-of-Ways and Well Permits Approval, Lassen County, CA, Due: May 27, 1991, Contact: John Bosworth, (916) 257-5381.

EIS No. 910103, DRAFT EIS, COE, CA, American River Watershed Flood Plain Protection Project, Construction, Operation and Maintenance, Implementation, Sacramento, Placer and Sutter Counties, CA, Due: June 14, 1991, Contact: Mike Welsh, (916) 551-2527.

EIS No. 910104, DRAFT EIS, BLM, ID, Stone Cabin Open Pit Gold and Silver Mine Development and Operation, Plan of Operations Approval and NPDES Permit Issuance, Florida Mountain, Boise District, Owyhee County, ID, Due: May 28, 1991, Contact: Fred Minckler, (208) 384-3300.

EIS No. 910105, DRAFT SUPPLEMENT, UMC, NC, Cherry 1 Military Operating Area (MOA), Craven, Beaufort, Hyde, Pamlico and Washington Counties and Core MOA, North Carolina Outer Banks/Cape Lookout National Seashore Establishment, Additional Mitigation Alternatives and Regional Cumulative Effects Analysis, NC, Due: May 27, 1991, Contact: Col. B. Bartels, (919) 466-2343.

EIS No. 910106, FINAL EIS, BLM, NV, Clark County Regional Flood Control Master Plan, Fcilities Construction and Operation, Right-of-Way Approval and Section 404 Permit, Clark County, NV, Due: May 13, 1991, Contact: Donn Siebert, (702) 647-5000.

EIS No. 910107, DRAFT EIS, UAF, IL, Scott Air Force Base Joint Military-Civilian Use, Civil Runway and Associated Airport Facilities Construction, Plan Approval, St. Clair County, IL, Due: May 27, 1991, Contact: Patrica Calliott, (618) 256-5764.

Amended Notices

EIS No. 910085, SECOND DRAFT SUPPLE, AFS, PR, Caribbean National Forest and Luquillo Experimental Forest Land and Resource Management Plan, Effects of Hurricane Hope and Updated Information, Commonweath of Puerto Rico, Due: May 27, 1991, Contact: Jose Salinas, Jr., (809) 766-5335. Published FR-03-29-91—Review period reestablished.

Dated: April 9, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-8699 Filed 4-11-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00301; FRL-3886-7]

FIFRA Scientific Advisory Panel Subpanel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel to review and comment on the Agency's antimicrobial test methodology research and protocol review process. The meeting will be open to the public.

DATES: The meeting will be held on Friday, May 3, 1991, from 8:30 a.m. to 4:30 p.m.

ADDRESS: The meeting will be held at: Sheraton Crystal City Hotel, Room Crystal six, 1800 Jefferson Davis Highway, Arlington, VA 22202 (703) 486–1111.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 821C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–4369/2244.

SUPPLEMENTARY INFORMATION: The Agency wants the SAP Subpanel to focus on two categories of test methods: (1) Methods resulting from EPA-funded research and (2) Registrant/commercial laboratory/EPA modifications to existing methods or development of new methods. With respect to category one, EPA is seeking Subpanel comments on the experimental methods selected for research, the approach being followed or proposed by the cooperators to achieve the objectives of the methods research, and changes and/or improvements that need to be made in the experimental approach to ensure that the appropriate work product is produced. With respect to category two, EPA is seeking Subpanel comments on the procedures and criteria established by the Agency for acceptance of new test methods and modification to existing methods.

The Subpanel will be chaired by Dr. James Tiedje, a member of the SAP. The members of the Subpanel are: Dr. Martin S. Favero, Centers for Disease Control, Atlanta; Dr. Charles Gerba, University of Arizona; Dr. Dieter H. M. Groschel, UVA Medical School; Dr. William Rutala and Dr. Mark D. Sobsey, University of North Carolina; and Dr. Syed Sattar, University of Ottawa.

Copies of documents relating to this review process, may be obtained by contacting: By mail: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 244 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–2805.

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or the phone number given above to be sure that the meeting is still scheduled and to confirm the Subpanel's agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advance notice to the Designated Federal Official, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Subpanel, but oral statements before the Subpanel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in room 244 Bay at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Subpanel.

Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit ten copies of a summary no later than April 24, 1991, in order to ensure appropriate consideration by the Subpanel. Copies of the Subpanel's report of their recommendations will be available 5–10 working days after the meeting and may be obtained by contacting the Public Docket and Freedom of Information Section at the address or telephone number given above.

Dated: April 8, 1991.

Linda J. Fisher,

Assistant Administrator, for Pesticides and Toxic Substances.

[FR Doc. 91-8665 Filed 4-12-91; 8:45 am]

BILLING CODE 6560-50-F

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Monday, April 29, 1991, from 9:30 a.m. to 12 noon. The meeting will be held at Eximbank in room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Financial and Budget Status Report, Congressional Status Report, Arrangement/Tied Aid Credit/Activity Status Report, Advisory Committee Responsibilities: Competitiveness Report and Lundine/Key Linkage Report, Topics/Issues for Possible Advisory Committee Input and Subcommittee Formation, and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871, not later than April 26, 1991. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to April 24, 1991, the Office of the Secretary, room 935, 811 Vermont Avenue NW., Washington, DC 20571, voice: (202) 566–8871 or TDD: (202) 535–3913.

FURTHER INFORMATION: For further information, contact Joan P. Harris, room 935, 811 Vermont Avenue NW., Washington, DC 20571 (202) 566–8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 91–8643 Filed 4–11–91; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Seattle/ Hanjin Shipping Co., Ltd. Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 224–200497.

Title: Port of Seattle/Hanjin Shipping Company, Ltd., Terminal Agreement.

Parties: Port of Seattle (Port), Hanjin Shipping Company, Ltd. (Hanjin).

Synopsis: The Agreement provides for Hanjin's preferential use of certain black-topped acreage, a ship's berth, a pier's apron, two container cranes, a third crane on a non-preferential basis, and certain offices and other facilities at the Port's Terminal 46 in the City of Seattle. The term of the Agreement is for 10 years.

By order of the Federal Maritime Commission.

Dated: April 9, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–8669 Filed 4–11–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Pikeville National Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 26, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Pikeville National Corporation, Pikeville, Kentucky; to acquire First Federal Savings Bank, Campbellsville, Kentucky, and thereby engage in operating a savings association pursuant to § 225.25(b)(9), and engage in credit-related life insurance activities pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-8639 Filed 4-11-91; 8:45 am]

BILLING CODE 6210-01-F

John James Tringas, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 1, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. John James Tringas, Fort Walton Beach, Florida; Alex James Tringas, Fort Walton Beach, Florida; and Lark Elaine Tringas Garrigan, LaCombe, Louisiana, to acquire 83.18 percent of the voting shares of Southern National Banks, Inc., Fort Walton Beach, Florida, and thereby indirectly acquire First National Bank & Trust, Fort Walton Beach, Florida.

Board of Governors of the Federal Reserve System, April 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-8640 Filed 4-11-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication. (For a copy of a package, call the FSA, Report Clearance Officer 202–401–5604.)

Annual Survey of Refugees—Form ORR–9.—In order to meet statutory requirements to collect information, labor force participation, and welfare

utilization, Office of Refugee Resettlement (ORR) conducts and annual survey of refugees who have arrived in the past five years.
Respondents: Individuals or households; *Number of Repondents:* 762; *Frequency of Response:* Annually; *Average Burden per Response:* .45 hours; *Estimated Annual Burden:* 343 hours.

OMB Desk Clearance Officer: Laura Oliven.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: March 21, 1991.

Naomi B. Marr,

Associate Administrator Office of Management and Information Systems.

[FR Doc. 91–8556 Filed 4–11–91; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

Occupational Safety and Health National Institute, Scientific Counselors Board

ACTION: Notice of Reestablishment—Board of Scientific Counselors, National Institute for Occupational Safety and Health.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. appendix 2, the Centers for Disease Control announces the reestablishment of the following Federal advisory committee by the Secretary of Health and Human Services:

Designation: Board of Scientific Counselors, National Institute for Occupational Safety and Health (NIOSH).

Purpose: The Board shall provide advice to the Director, NIOSH, on NIOSH research programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results. The Board shall evaluate (1) the degree to which the research activities of NIOSH conform to those standards of scientific excellence appropriate to Federal scientific institutions in accomplishing objectives in occupational safety and health; (2) the degree to which the research activities, alone or in conjunction with other known activities inside and outside of NIOSH, address currently relevant needs in the fields of occupational safety and health; and (3) the degree to which the research activities produce their intended results in addressing important research questions in occupational safety and health, both in terms of applicability of the research findings and dissemination of the findings.

Authority for this board will expire February 3, 1993, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: April 8, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–8638 Filed 4–11–91; 8:45 am]

BILLING CODE 4160–19–M

Health Resources and Services Administration

Final Special Consideration for Allied Health Project Grants

The Health Resources and Services Administration (HRSA), announces the final special consideration for fiscal year (FY) 1991 Allied Health Project Grants. This grant program is authorized under section 796, title VII, of the Public Health Service Act (the Act), as amended by the Health Professions Reauthorization Act of 1988, Public Law 100–607.

Section 796 authorizes the award of grants for the costs of planning, developing, establishing, operating, and evaluating projects for:

(1) Improving and strengthening the effectiveness of allied health administration, program directors, faculty, and clinical faculty;

(2) Improving and expanding program enrollments in those professions in greatest demand and whose services are most needed by the elderly;

(3) Promoting the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly through interdisciplinary training programs;

(4) Emphasizing innovative models to link allied health clinical practice, education and research;

(5) Adding and strengthening curriculum units in allied health programs to include knowledge and practice concerning prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics; and

(6) The recruitment of individuals into allied health professions including projects for:

(A) The identification and recruitment of highly qualified individuals, including the provision of educational and work experiences for recruits at the secondary and collegiate levels;

(B) The identification and recruitment of minority and disadvantaged students, including the provision of remedial and tutorial services prior and subsequent to admission, the provision of work-study programs for secondary students, and recruitment activities directed toward primary school students; and

(C) The coordination and improvement of recruitment efforts among official and voluntary agencies and institutions, including official departments of education, at the city, county, and State or regional level.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. One of the legislative purposes of the Allied Health Project Grant program, section 796, is to add and strengthen curriculum units in allied health programs to include knowledge and practice concerning prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics. This purpose provides the flexibility for applicants to address any of the 22 priority areas. Applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202 783–3238).

As part of its long-range planning, the HRSA is targeting its efforts to strengthening linkages between its training programs and Public Health Service programs which provide comprehensive primary care services to the underserved.

Eligible Applicants

To be eligible for a grant, an applicant must be a school, university or other public or nonprofit private educational entity which provides for allied health personnel education and training.

Review Criteria

The review criteria, stated below, were established in FY 1990 after public comment, and remain unchanged in FY 1991.

- The extent to which the proposed project meets the legislative purpose.
- The background and rationale for the proposed project.

• The extent to which the project contains clearly stated realistic and achievable objectives.

• The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans.

• The evaluation plans and procedures for program and trainees, if involved.

• The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources.

• The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable.

• Whether there is an institutional plan and commitment for self-sufficiency when Federal support ends.

A proposed special consideration was published for public comment in the Federal Register on February 5, 1991 (FR 56 4634). The Department received one comment on its proposal during the 30-day comment period. The comment and the Department's response are summarized below.

The respondent, a community-based primary health care center, expressed concern that should eligible educational entities in its area choose not to apply for the special consideration, the center would be excluded from participation in this grant program. The notice states that a special consideration does not preclude funding of eligible approved applications that do not request the special consideration. The respondent's center could, therefore, still participate if an applicant in its area receives a grant (whether or not it applied for the special consideration) and affiliates with the center.

The respondent correctly notes that a CHC is not eligible to apply for funding under this program as a separate entity. As defined by statute and stated in the notice, an applicant must be a school, university, or other public or nonprofit private educational entity which provides for allied health personnel education and training. However, an eligible recipient may involve an entity, such as a CHC, in its educational program. The HRSA has as a major initiative the integration of health professions training with health service activities.

The Department has finalized the special consideration as proposed.

Final Special Consideration for Fiscal Year 1991

In the review of applications, the HRSA will give special consideration to the following:

Applicants demonstrating affiliation agreements for interdisciplinary training experiences in one or more of the following: A nursing home; hospital or ambulatory care center providing substantial geriatric health care; Migrant Health Center (section 329 of the Act); Community Health Center (section 330 of the Act); Health Professional Shortage Area (section 332 of the Act); Area Health Education Center (section 781(a) of the Act); or a State or local public health or designated clinic or center serving an underserved population, or a rural health clinic or other facility with training opportunities in a rural area.

Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers;

Section 330 authorizes support for community health care services to medically underserved populations;

Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas; and

Section 781(a) authorizes support for Area Health Education Centers to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system.

Questions regarding programmatic information should be directed to: Program Officer, Associated Health Professions Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–02, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6763.

The Catalog of Federal Domestic Assistance number for the Allied Health Project Grants program is 93.191. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: April 5, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–8645 Filed 4–11–91; 8:45 am]

BILLING CODE 4160–15–M

Emergency Medical Services for Children Demonstration Grants

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the due date previously published in the Federal Register on March 6, 1991, (56 FR 9366) for demonstration grants for the expansion and improvement of emergency medical services (EMS) for children. The new due date for EMS for children is May 16, 1991.

Dated: April 5, 1991.

Robert G. Harmon,

Administrator.

[FR. Doc. 91–8644 Filed 4–11–91; 8:45am]

BILLING CODE 4160–15–M

Health Education Assistance Loan Program, "Maximum Interest Rates for Quarter Ending June 30, 1991"

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

Section 60.13(a)(4) of the program's implementing regulations (42 CFR part 60, previously 45 CFR part 126) provides that the Secretary will annouce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending June 30, 1991, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 9¾ percent. Using the regulatory formula (45 CFR 126.13(a)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (6.22 percent), and rounding the result (9.72 percent) upward to the nearest ⅛ percent (9¾ percent).

However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending June 30, 1991, is not in excess of 12 percent, there is no

necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 11⅝ percent for the quarter ending September 30, 1990; 11¼ percent for the quarter ending December 31, 1990; and 10¾ percent for the quarter ending March 31, 1991.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 9¾ percent. Using the regulatory formula (42 CFR 60.13(a)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (6.22 percent); adding 3.50 percent (9.72 percent); and rounding that figure to the next higher one-eighth of 1 percent (9¾ percent).

3. For fixed rate loans executed during the period of April 1, 1991 through June 30, 1991, and for variable rate loans executed on or after October 22, 1985, the interest rate is 9¼ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (6.22 percent); adding 3.0 percent (9.22 percent) and rounding that figure to the next higher one-eighth of 1 percent (9¼ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: April 5, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–8648 Filed 4–11–91; 8:45am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, April 5, 1991. (Call PHS Reports Clearance Officer on 202–245–2100 for copies of submission.)

1. Adolescent Assessment/Referral System (AARS)—New—This study will gather data to refine and validate the Adolescent Assessment/Referral System, a treatment planning system for adolescent substance abusers, and to assess resources and technical assistance needed to support implementation. *Respondents:* Individuals or Households; *Number of Respondents:* 624; *Number of Responses per Respondent:* 3.37; *Average Burden per Response:* 1.405 hour; *Estimated Annual Burden:* 2,953 hours.

2. 1992 National Health Interview Survey—New—The National Health Interview Survey (NHIS), an ongoing survey of the civilian, non-institutionalized population, monitors the Nation's health. The 1992 NHIS will include supplements on "Cancer Risk Factors", "Youth Risk Behavior", "Family Resources", "Immunization" and "AIDS Knowledge and Attitudes." *Respondents:* Individuals or households; *Number of Respondents:* 48,500; *Number of Responses per Respondent:* 1; *Average Burden Per Response:* 1.65; *Estimated Annual Burden:* 79,978.

3. Application for Participation in the Indian Health Service Scholarship Program—0917–0006—"Native American Scholarship Program"—The information to be collected will be used to select IHS Pregraduate, Preparatory and/or Health Professions Scholarship grantees. *Respondents:* Individuals, state or local governments, businesses or other for-profit, non-profit institutions; small businesses or organizations; *Number of Respondents:* 2,625; *Number of Responses Per Respondent: 1; Average Burden Per Response:* 1.68; *Estimated Annual Burden:* 4,418.

4. NCHS Application for Technical Assistance—Training Form—0920–0217—Applicants for mortality medical coder training and for vital registration methods training complete an application form for use by the instructor in selecting training applicants. An annual survey of medical coder training is conducted among vital registration areas. This training is in support of coverage and quality of national vital statistics data. *Respondents:* Individuals or households; State or local governments; *Number of Respondents:* 192; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .27; *Estimated Annual Burden:* 52 hours. OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: April 8, 1991.

James M. Friedman,

Director, Office of Health Planning and Evaluation.

[FR Doc. 91–8703 Filed 4–11–91; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Privacy Act of 1974; Report of New System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to establish a new system of records. The proposed system of records is entitled "Master Representative Payee File, HHS/SSA/ORSI, 09–60–0222." We are proposing to establish the system primarily to maintain information that will assist in the representative payee selection process in accordance with sections 205(j) and 1631(a)(2) of the Social Security Act (the Act). We also are proposing to establish routine uses of the information which will be maintained in the system. We invite public comment on this publication.

DATES: We filed a report of the proposed system with the Chairman, Committee on Government Operations of the House of Representatives, and the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on April 1, 1991. The proposed system, including the proposed routine uses, will become effective on June 1, 1991, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Sailor, Division of Benefit Continuity, Office of Retirement and Survivors Insurance, Social Security Administration, 3–A–21 Operations

Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–965–7884.

SUPPLEMENTARY INFORMATION:

I. Discussion of the proposed system

General authority to establish and maintain the proposed system of records has existed for many years in sections 205 (a) and (j) and 1631(a)(2) of the Act. A specific mandate to maintain certain information in such a system is included among the representative payee reforms enacted in section 5105 of Public Law No. 101–508, the Omnibus Budget Reconcilitation Act of 1990 (OBRA). Among other things, these OBRA provisions amended section 205(j) of the Social Security Act (the Act) to require SSA to establish a centralized file accessible by Social Security field offices (FO) which maintains the following information:

- Names and Social Security numbers (SSN) (or employer identification numbers (EIN)) of representative payees whose certifications of payment of benefits have been revoked or terminated on or after January 1, 1991, because of misuse of benefits paid under title II or title XVI of the Act;
- Names and SSNs (or EINS) of all persons convicted of a violation of section 208 or section 1632 of the Act;
- Names, addresses, and SSNs (or EINs) of representative payees who are receiving benefit payments pursuant to sections 205(j) or section 1631(a)(2) of the Act; and
- Names, addresses, and SSNs of individuals for whom representative payees are reported to be providing representative payee services under section 205(j) or section 1631(a)(2) of the Act.

In addition, under the authority of sections 205(a) and 205(j) of the Act SSA will maintain the following information in the system:

- Names, addresses, and SSNs of representative payee applicants who were not selected as representative payees;
- Names, addresses, and SSNs of persons who were terminated as representative payees for reasons other than misuse of benefits paid to them on behalf of beneficiaries/ recipients;
- Information on representative payees' relationship to the beneficiaries/recipients they serve;
- Names, addresses, and EINs of organizations authorized to charge a fee for providing representative payee services; and
- Codes which indicate the relationship (other than familial) between the beneficiaries/recipients and the individuals who have custody of the beneficiaries/recipients;
- Dates and reasons for payee terminations (e.g., performance not acceptable, death of payee, beneficiary in direct payment, etc.) and revocations;
- Dates and reasons representative payee applicants were not selected to serve as payees and dates and reasons for changes of payees (e.g., beneficiary in direct payment, etc.); and
- Codes indicating whether applicant was selected or not selected.

If a representative payee is subsequently determined to have misused benefits, the system includes, as appropriate:

- Amount of benefits misused;
- Identification number assigned to the claim on which the misuse occurred;
- Date of the determination of misuse; and
- Information about a felony conviction reported by the representative payee applicant.

We are proposing to establish the Master Representative Payee File to maintain the above information. SSA will use this system primarily to assist in the representative payee selection process. The system will enable Social Security FOs to more carefully screen applicants and to determine their suitability to become representative payees. SSA also will use the data that will be maintained in the system for management information and workload projection purposes and to prepare annual reports to Congress on representative payee activities as required by sections 205(j) and 1631(a) of the Act and section 5105 of OBRA.

II. Collection and maintenance of data in the proposed system

SSA will collect data in paper form and from current systems and will store the information in magnetic media. The data maintained in the system will be obtained from the following sources:

- From claimants for Social Security benefits and Supplemental Security Income payments;
- From current representative payees;
- From representative payee applicants; and
- Existing systems of records within HHS and SSA (e.g., Criminal Investigative Files of the HHS Inspector General and SSA's Recovery of Overpayments, Accounting and Reporting system).

III. Proposed routine use disclosures of data in the system

We are proposing to disclose information from the system for the following routine uses:

A. *Information may be disclosed to the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when*

(1) SSA, or any component thereof; or

(2) any SSA employee in his/her official capacity; or

(3) any SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(4) the United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components,

is a party to litigation or has an interest in such litigation. Disclosure will occur only if SSA determines that the use of such records before the tribunal is relevant and necessary to the litigation, would help in the effective representation of the governmental party, and in each case, such disclosure is compatible with the purpose for which the records were collected.

This proposed routine use will permit us to disclose information from the proposed system when SSA components and/or employees are involved in litigation involving the system. The routine use also will permit disclosure in instances in which SSA brings suit or another party brings suit and SSA has an interest in the litigation.

B. *Information pertaining to an individual may be disclosed to a congressional office in response to an inquiry from that office made at the request of the subject of the record.*

We contemplate disclosing information under this routine use only in situations in which the individual to whom the information pertains asks his/her congressional representative to intercede in an SSA matter on his/her behalf. Information will be disclosed when the congressional representative makes an inquiry and presents evidence that he/she is acting on behalf of the individual whose record is requested.

C. *Information may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) for the purpose of conducting records management studies under 44 U.S.C. 2904 and 2906, when such disclosure is not prohibited by Federal law.*

The Administrator, GSA, and the Archivist, NARA, are charged by 44 U.S.C. 2904, with promulgating standards, procedures, and guidelines with respect to records management and the conduct of records management studies. Section 2906 provides that GSA and NARA shall have access to Federal Agencies' records and that Agencies shall cooperate with GSA and NARA. In

carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use would facilitate disclosure.

D. *Information may be disclosed to the Department of Veterans Affairs Regional Office (DVARO) in the Philippines, for the administration of the Social Security Act in the Philippines through services and facilities of that agency.*

SSA does not maintain field offices in the Philippines. We rely on DVARO to administer the Social Security program in the Philippines. This proposed routine use will permit us to disclose information from the proposed system to allow the DVARO to effectively administer SSA's representative payee program in the Philippines.

E. *Information may be disclosed to the Department of State for administration of the Social Security Act in foreign countries through services and facilities of that agency.*

SSA relies on the Department of State to administer Social Security affairs in foreign countries. This proposed routine use will permit us to disclose information from the proposed system to allow Department of State as necessary to effectively administer SSA's representative payee program in foreign countries.

F. *Information may be disclosed to the Department of Interior for administration of the Social Security Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.*

SSA relies on the Department of Interior to administer Social Security affairs in the Trust Territory of the Pacific Islands. This proposed routine use will permit us to disclose information from the proposed system when it is necessary to effectively administer SSA's representative payee program in the Trust Territory of the Pacific Islands.

G. *Information may be disclosed to the American Institute in Taiwan for administration of the Social Security Act in Taiwan through services and facilities of that agency.*

The American Institute in Taiwan assists SSA with Social Security affairs in Taiwan. This proposed routine use will permit us to disclose information from the proposed system to the American Institute when disclosure is necessary to effectively administer the representative payee program in Taiwan.

H. *Information may be disclosed to DOJ for:*

(1) Investigating and prosecuting violations of the Act to which criminal penalties attach;

(2) Representing the Secretary; and

(3) Investigating issues of fraud or violations of civil rights by officers or employees of SSA.

This proposed routine use will permit us to disclose information from the proposed system to DOJ when the information is needed to investigate alleged fraudulent activities or violations of the Act by representative payees. Also, this routine use covers disclosure to DOJ when that agency needs information to investigate alleged violations of civil rights by officers and employees of SSA.

I. *Information about an individual may be disclosed to the Office of the President for responding to an inquiry received from that individual or from a third party acting on that individual's behalf.*

We contemplate disclosing information pertaining to an individual under this routine use only in situations in which that individual or someone else on the individual's behalf asks the President to intercede in an SSA matter pertaining to the individual. Information will be disclosed when the Office of the President makes in inquiry and presents evidence that it is acting on behalf of the individual whose record is requested.

J. *Information may be disclosed to the DVA for the shared administration of both SSA's and DVA's representative payee programs.*

One of the provisions of section 5105 of OBRA requires SSA to explore the feasibility of a cooperative representative payee program with the DVA. This routine use will permit disclosure to identify beneficiaries/recipients and/or representative payees who have involvement with benefit programs administered by both SSA and DVA.

IV. Compatibility of the proposed routine uses

The Privacy Act (5 U.S.C. 552a(a)(7) and 5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR part 401) permit us to disclose data for a routine use, i.e., a use serving a purpose which is compatible with the purpose for which we collected the information. Section 401.310 of the regulation permits us to disclose information under a routine use for administering our programs or similar programs of other agencies. The proposed routine uses identified in III.A, B, and D–J above meet this criteria. We also consider disclosures required by Federal law as disclosures for compatible purposes. The routine use to GSA and NARA identified in III.C above is required by 44 U.S.C. 2904 and 2906 and thus, meets our compatibility criteria for disclosing information.

V. Safeguards

We will employ a number of security measures which are designed to minimize the risk of unauthorized access to, and disclosure of, personal data in the proposed system. This includes using passwords and access codes to enter the computer system which will maintain the records and maintaining data in secured storage areas which are accessible only to employees who require the information to perform their assigned duties. SSA employees who have access to the data will be notified of the criminal penalties of the Privacy Act dealing with unauthorized access to, or disclosure of, information which will be maintained in the system.

IV. Effect of the proposed system of records on individual rights

The proposed system of records will maintain information about existing representative payees, representative payee applicants, former representative payees, and other individuals to ensure that the best applicants are selected as representative payees on behalf of beneficiaries who have been determined to be incapable of managing or directing the managing of their own benefits and for general management and reporting purposes which do not affect individual rights. Thus, we do not believe that the proposed system will have any unwarranted adverse effect on individual rights.

Dated: April 1, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

09-60-0222

SYSTEM NAME:

Master Representative Payee File, HHS/SSA/ORSI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system database will be available by direct electronic access by Social Security field offices (FO). Addresses of FOs can be found by calling the number listed in local telephone directories under "United States Department of Health and Human Services, Social Security Administration" or under "Social Security Administration."

The database is housed at the National Computer Center, Social

Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information about persons whose certifications of payment of benefits as representative payees have been revoked or terminated on or after January 1, 1991; persons who have been convicted of a violation of section 208 or section 1632 of the Social Security Act (the Act); persons who are acting or have acted as representative payees, representative payee applicants who were not selected to serve as representative payees, and beneficiaries/applicants who are being served by representative payees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data in this system consist of:

- Names and SSNs (or employer identification numbers (EIN)) of representative payees whose certifications of payment of benefits have been revoked or terminated on or after January 1, 1991, because of misuse of benefits under title II or title XVI of the Social Security Act (the Act);
- Names and SSNs (or EINs) of all persons convicted of a violation of section 208 or 1632 of the Act;
- Names, addresses, and SSNs (or EINs) of representative payees who are receiving benefit payments pursuant to section 205(j) or section 1631(a)(2) of the Act;
- Names, addresses, and SSNs of individuals for whom representative payees are reported to be providing representative payee services under section 205(j) or section 1631(a)(2) of the Act;
- Names, addresses, and SSNs of representative payee applicants who were not selected as representative payees;
- Names, addresses, and SSNs of persons who were terminated as representative payees for reasons other than misuse of benefits paid to them on behalf of beneficiaries/recipients;
- Information on the representative payees' relationship to the beneficiaries/recipients they serve;
- Names, addresses, and EINs of organizations authorized to charge a fee for providing representative payee services;
- Codes which indicate the relationship (other than familial) between the beneficiaries/recipients and the individuals who have custody of the beneficiaries/recipients;
- Dates and reasons for payee terminations (e.g., performance not acceptable, death of payee, beneficiary in direct payment, etc.), and revocations;
- Codes indicating whether representative payee applicants were selected or not selected;
- Dates and reasons representative payee applicants were not selected to serve as payees and dates and reasons for changes of payees (e.g., beneficiary in direct payment, etc.);
- Amount of benefits misused;
- Identification number assigned to the claim on which the misuse occurred;
- Date of the determination of misuse; and
- Information about a felony conviction reported by the representative payee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a), 205(j) and 1631(a) of the Act.

PURPOSE(S):

Information maintained in this system will assist SSA in the representative payee selection process enabling Social Security field offices to more carefully screen applicants and to determine their suitability to become representative payees. SSA also will use the data for management information and workload projection purposes and to prepare annual reports to Congress on representative payee activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed for routine uses as indicated below.

1. Information may be disclosed to the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components,

is a party to litigation or has an interest in such litigation. Disclosure will occur only if SSA determines that the use of such records before the tribunal is relevant and necessary to the litigation, would help in the effective representation of the governmental party, and, in each case, such disclosure is compatible with the purpose for which the records were collected.

2. Information pertaining to an individual may be disclosed to a congressional office in response to an inquiry from that office made at the request of the subject of the records.

3. Information may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies under 44 U.S.C. 2904 and 2906, when such disclosure is not prohibited by Federal law.

4. Information may be disclosed to the Department of Veterans Affairs (DVA) Regional Office in the Philippines for the administration of the Social Security Act in the Philippines through services and facilities of that agency.

5. Information may be disclosed to the Department of State for administration of the Social Security Act in foreign countries through services and facilities of that agency.

6. Information may be disclosed to the Department of Interior for administration of the Social Security Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

7. Information may be disclosed to the American Institute in Taiwan for administration of the Social Security Act in Taiwan through services and facilities of that agency.

8. Information may be disclosed to DOJ for:

(a) Investigating and prosecuting violations of the Act to which criminal penalties attach,

(b) Representing the Secretary, and

(c) Investigating issues of fraud or violations of civil rights by officers or employees of SSA.

9. Information about an individual may be disclosed to the Office of the President for responding to an inquiry received from that individual or from a third party acting on that individual's behalf.

10. Information may be disclosed to DVA for the shared administration of that Department's and SSA's representative payee programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in magnetic media (e.g., magnetic tape and disc).

RETRIEVABILITY:

Data will be retrieved from the system by the name, SSN or EIN, and the ZIP code (in a situation where the representative payee is an institution) of the representative payee, or the name or SSN of the beneficiary/recipient.

SAFEGUARDS (ACCESS CONTROLS):

Safeguards for automated data have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook. Magnetic tapes are in secured storage areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

The magnetic media are updated periodically. Out-of-date tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Retirement and Survivors Insurance, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains data about him/her by writing to the system manager at the address shown above and providing his/her name, address, and SSN or EIN. An individual requesting notification of data in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via telephone must furnish a minimum of his/her name, SSN or EIN, date of birth, and address in order to establish identity, plus any additional information which may be specified in this section. An individual requesting notification via mail must submit sufficient evidence (i.e., the individual's notarized signature or a signed statement that he/she is the individual to whom the record pertains and that he/she understands that there are criminal penalties for making a knowing and willful request for access to records concerning another individual under false pretenses) to establish identity. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures above. Also, a requester should reasonably identify and specify the information he/she is attempting to obtain. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, an individual contesting records in the system should identify the record, specify the information he/she is contesting, state the corrective action sought, and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Data in this system will be obtained from representative payee applicants and representative payees, the HHS Office of the Inspector General, and other SSA systems or records (e.g., Claims Folder System (09–60–0089), Master Beneficiary Record (09–90–0090), Supplemental Security Income Record (09–60–0103), Master Files of SSN Holders (09–60–0058), Recovery of Overpayments, Accounting and Reporting System (09–60–0094)).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91–8662 Filed 4–11–91; 8:45 am]

BILLING CODE 4190–29

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–21]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: April 12, 1991.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties detemined as suitable.

All properties described in this Notice have been determined by HUD to be unsuitable for use as facilities to assist the homeless. These properties will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice, providers should contact the appropriate landholding agencies at the following addresses: GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10317, Washington, DC 20590; (202) 366–5601; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington,

DC 20585; (202) 586–1191. (These are not toll-free numbers.)

Correction: The following four GSA properties were included in error in the **Federal Register** Notice of March 29, 1991 (56 FR 13159): Property No. 549030001, Alabama Army Munitions Plant, Childersburg, AL (Unsuitable); Property No. 549040002, Martins Fork Lake property, Harden, KY (Suitable/Available); Property No. 549010015, easement, Navy Air Development, Ivyland, PA (Unsuitable); Property No. 549010065, Federal Buidling, W. Lamar St., McKinney, TX (Suitable/Available). These properties were screened for homeless use during 1990 and have either been conveyed or are pending conveyance.

Dated: April 8, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V Federal Register Report Unsuitable Properties

Unsuitable Land (by State)

Alaska

Nike Site, Tract 104
Jig Battery "D"
Eielson Defense Area
Fairbanks, AK, Co: Fairbanks 99701-
Landholding Agency: GSA
Property Number: 549120001
Status: Excess
Reason: Other
Comment: Property is landlocked.
GSA NO. 9-D-AK-506-AD

Kentucky

E.C. Clements Job Corps Cntr.
1 Mile East of Morganfield, Ky.
Morganfield, KY, Co: Union 42437-
Landholding Agency: GSA
Property Number: 549120002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material within airport runway clear zone.
GSA NO. 4-L-KY-432-E

Michigan

Middle Marker Facility
Ypsilanti, MI, Co: Washtenaw 48198-
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 879120006
Status: Unutilized
Reason: Within airport runway clear zone.

Unsuitable Buildings (by State)

Alaska

Old Upper Govt Housing—#1–70
Coast Guard Support Center Kodiak, POB14
Kodiak, AK, Co: Kodiak 99619–5000
Landholding Agency: DOT
Property Numbers 879120012–879120081
Status: Unutilized
Reason: Secured Area.

Alabama

5 Buildings
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores, AL, Co: Baldwin 36542-
Landholding Agency: DOT
Property Numbers: 879120001–879120005
Status: Excess
Reason: Floodway.

Florida

USCG Station Cortez
4350 124th St., Circle W
Cortez, FL, Co: Manatee 33506—
Landholding Agency: DOT
Property Number: 879120008
Status: Underutilized
Reason: Secured Area, Floodway.

Illinois

Bldg. 982
Fermi National Accelerator Lab—Site 56
Shed 1
Batavia, Il, Co: DuPage 60510
Landholding Agency: Energy
Property Number: 419120001
Status: Excess
Reason: Other
Comment: Structurally unsound, dilapidated storage shed for off-site use only.

Vortac Facility
FAA
Joliet, IL Co: DuPage 60436
Location: From Joliet Airport west on Hwy. 52—8 miles north of Township Gravel Road—2.5 miles to site entrance.
Landholding Agency: DOT
Property Number: 879120011
Status: Underutilized
Reason: Secured Area.

New Jersey

Bldg. 120
USCG Training Center Cape May
North side of Munro Ave.
Cape May, NJ, Co: Cape May 08204
Location: Opposite GSK Bldg. 204
Landholding Agency: DOT
Property Number: 879120007
Status: Unutilized
Reason: Secured Area.

Pennsylvania

Harrisburg Arpt Surv Radar 4
FAA
Lower Allen Township, PA Co: Cumberland 17070
Location: Take left at the end of Beacon Hill Road in New Cumberland
Landholding Agency: DOT
Property Number: 879120009
Status: Unutilized
Reason: Secured Area.

Washington

Bldg. 42 and 43, 36
Stehekin District
Stehekin, WA Co: Chelan 98852
Location: Stehekin Valley Road, Lake Chelan National Recreation Area
Landholding Agency: Interior
Property Numbers: 619120001–619120002
Status: Unutilized
Reason: Other
Comment: Not accessible by road.

Hale Residences—#1–6, and Shed
C/O Quinault Ranger Station
Amanda Park, WA, Co: Grays Harbor 98526-9702
Landholding Agency: Interior
Property Numbers: 619120003–619120009
Status: Unutilized
Reason: Other
Comment: Structurally unsound-extensive deterioration, off-site removal only.

Wisconsin

Vortac Facility
FAA
Wausau, WI, Co: Marathon 5441
Location: From intersection of St. Hwy. 29 and County Trunk X proceed south on X 4 ⅛ miles to site entrance
Landholding Agency: DOT
Property Number: 879120010
Status: Underutilized
Reason: Secured Area.

[FR Doc. 91–8655 Filed 4–11–91; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–91–3102; FR–2835–N–03]

Single Family Property Disposition; Demonstration Program for Sale of Properties to Nonprofits and Governmental Entities

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of extension of deadline for proposals.

SUMMARY: This Notice announces the extension of the deadline for submission of proposals for the sale of HUD-acquired single family properties to private nonprofit organizations and governmental entities for resale to low- and moderate-income families. The sale is being conducted through a demonstration program, announced on November 28, 1990 (55 FR 49490), to test the cost-effectiveness of an alternative way of reducing the inventory of HUD-acquired properties consistent with the need to preserve neighborhoods and promote homeownership opportunities.

EFFECTIVE DATE: April 12, 1991. The deadline for proposals to participate in the demonstration is extended to July 31, 1991.

FOR MORE INFORMATION CONTACT: Marion F. Connell, Single Family Property Disposition Division, room 9170, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–1832 or, for hearing and speech-impaired, (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On August 9, 1990 (55 FR 32562), HUD announced a demonstration program to explore a method of reducing the inventory of HUD-acquired single family properties, while stabilizing, preserving, and improving neighborhoods and providing a source of affordable homeownership opportunities for low- and moderate-income owner-occupants. After a period of public comment on the demonstration, HUD published a Notice on November 28, 1990 (55 FR 49490) inviting proposals from private nonprofit organizations and governmental entities for the purchase of properties. The Notice announced that HUD field offices would accept proposals for a period of six months following the date of the Notice, or May 29, 1991.

HUD has received several requests from its regional and field offices to extend the deadline for proposals in order to complete their outreach efforts of informing potential applicants and to give the demonstration a more adequate test. HUD has determined that it is appropriate, for the reasons stated above, to permit proposals to be submitted to field offices until the close of business hours on July 31, 1991, provided the nationwide cap of 1500 properties allotted for the demonstration is not reached before that date.

Dated: April 4, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–8634 Filed 4–11–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–4130–09]

Stone Cabin Mine, ID; Draft Environmental Impact Statement, Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act and 43 CFR part 3809 (Mining Regulations) the Bureau of Land Management has prepared a draft environmental impact statement (EIS) on a Plan of Operations for the Stone Cabin Mine. The draft EIS is now available for public review and comment.

DATES: The public comment period for the draft EIS will close on May 28, 1991. Written comments should be mailed to the address listed below. Two public meetings will be held to accept oral comments at the following dates, times and locations: April 23, 1991, 7 p.m., Red Lion Riverside, 29th and Chinden Boulevard, Boise, Idaho and April 24, 1991, 7 p.m., Lions Community Hall, Highway 97, Jordan Valley, Oregon.

ADDRESSES: Written comments should be mailed to: Owyhee Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise ID 83705.

FOR FURTHER INFORMATION CONTACT: Owyhee Area Manager or Fred Minckler, Team Leader at the Bureau of Land Management 3984 Development Avenue, Boise ID 83705, telephone (208) 384–3300.

SUPPLEMENTARY INFORMATION: The Stone Cabin Mine is a proposed open-pit gold and silver mine located in the Owyhee Mountains in Southwestern Idaho. The mine would be located on Florida Mountain, about 50 miles southwest of Boise, Idaho and about one mile west of the historic mining town of Silver City, Idaho. The Stone Cabin Mine would be operated as a satellite facility and would share some components of the existing DeLamar Silver Mine located about five miles west of the proposed Stone Cabin Mine site.

Dated: April 2, 1991.

Barry C. Cushing,

Acting District Manager.

[FR Doc. 91–8617 Filed 4–11–91; 8:45 am]

BILLING CODE 4310–GG–M

[UT–060–01–4212–13; UTU–54732]

Availability of the Proposed Planning Amendment for the Price River Resource Area Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of the proposed planning amendment for the Price River Resource Area Management Framework Plan.

SUMMARY: Notice is given to the public that the proposed planning amendment is available for the public to review. The plan amendment will read as follows:

The following described parcel of public land will be managed for disposal only through exchange under section 206 of the Federal Land Policy and Management Act of 1976:

Salt Lake Meridian, Utah

T. 14 S., R. 10 E.,
Sec. 14, E2SE4 (80.0 ac.) (surface and minerals);
Sec. 23, E2NE4NE4, S2NE4 (100.0 ac.) (surface and minerals).
Encompassing 180.0 acres, more or less.

The following described parcels of private land will be acquired, only through exchange under section 206 of the Federal Land Policy and Management Act of 1976:

Salt Lake Meridian, Utah

T. 13 S., R. 10 E.,
Sec. 11, SE4 (160.0 ac.) (surface and minerals);
Sec. 14, NW4NE4 (40.0 ac.), NE4NW4 (40.0 ac.) (surface and minerals).
T. 13 S., R. 11 E.,
Sec. 31, lot 3 (40.22 ac.), lot 4 (40.18 ac.) (surface only).
T. 14 S., R. 11 E.,
Sec. 6, lot 4 (40.78 ac.) (surface only);
Sec. 7, lot 1 (40.34 ac.), lot 2 (40.39 ac.) (surface only).
Encompassing 441.91 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637–4584, or Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Road, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The Proposed Planning Amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must be received by the Director (WO–760) of the Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability for the Proposed Planning Amendment.

Dated: April 8, 1991.

James M. Parker,

State Director.

[FR Doc. 91–8636 Filed 4–11–91; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–060–01–4410–04–ADVB]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session Thursday, May 2, 1991, from 8 a.m. to 5:15 p.m. and Saturday, May 4, 1991, from 8 a.m. to 4:30 p.m., in the

Lakeshore Inn, 21330 Lakeshore Drive, in California City, California.

Agenda items for the meetings will include:

—A review by Bureau of Mines personnel of their East Mojave minerals report;
—An update on the status of various mining issues within the Bureau's California Desert District;
—Council recognition of Public Land interest groups;
—A review of the issues identified for a California Desert Conservation Area Plan Recreation Element Amendment and the subsequent alternatives proposed for environmental review;
—Discussion of a schedule for future California Desert Conservation Area Plan amendment proposals, with recommendations from the Council;
—An update on a proposal from the City of Canyon Lake to close a section of Public Land adjacent to the lake;
—Council review of the preparation plan for the West Mojave Tortoise Plan;
—A report from the U.S. Fish and Wildlife Service regarding progress by the desert tortoise recovery team;
—A review of the status of Biological Opinions issued by the U.S. Fish and Wildlife Service regarding key desert issues;
—A summary of findings from the 1990 desert tortoise field season;
—An update on BLM's proposed raven management program; and
—A review of tortoise-related projects financed through contributed funding with a discussion of other potential funding sources.

During the Council discussion on desert tortoise related issues, the group functions as the Bureau's California Desert Tortoise Coordinating Committee.

All formal Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items and is scheduled at the end of the meeting for topics not on the agenda.

On Friday, May 3, 1991, from 7:30 a.m. to 5 p.m., Council members will participate in a field trip to the Desert Tortoise Natural Area, the Rand Mountains/Fremont Valley planning area, Randsburg, and the Pilot Knob grazing allotment. The primary focus of the trip will be on desert tortoise-related issues, though topics such as occupancy trespass, mining, and off-highway vehicle use also may be discussed. The public is welcome to participate in the field tour, but should plan on providing their own transportation, drinks, and lunch. Anyone interested in participating should contact BLM at (800) 446-6743 or (714) 653-6950 for more information. The tour will assemble at the Lakeshore Inn on Friday morning at 7:15 a.m.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Mr. David Fisher, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507-0714. Written comments are also accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507-0714 (800) 446-6743 or (714) 653-6950.

Dated: April 3, 1991.

Richard E. Crowe,

Acting District Manager.

[FR Doc. 91-8605 Filed 4-11-91; 8:45 am]

BILLING CODE 4310-40-M

[OR-943-4212-13; GP1-178; OR-37655]

Conveyance of Public Land; Order Providing for Opening Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 80 acres of public land out of Federal ownership. This action will also open 80 acres of reconveyed land to mineral leasing. The land has been and remains open to oil and gas leasing, and is within the Owyhee Reclamation withdrawal and will not be opened to surface entry and mining.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of land made pursuant to section 206 of the Act of 1976, 90 Stat. 2756; 43 U.S.C. 1716, a patent has been issued transferring 80 acres in Malheur County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 20 S., R. 46 E.,
Sec. 6, SE¼SW¼ and SW¼SE¼.
The area described contains 80 acres in Malheur County.

3. At 8:30 a.m., on May 20, 1991, the land described in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Dated: April 3, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-8606 Filed 4-11-91; 8:45 am]

BILLING CODE 4310-33-M

[AZ 020-01-4212-12; AZA 25178]

Realty Action: Exchange of Public Land, Navajo and Pinal Counties, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

Navajo County

T. 13 N., R. 18 E.,
Sec. 4, lots 1 to 4, incl., S½N½, S½.
T. 14 N., R. 18 E.,
Sec. 28, E½.
Containing 959.94 acres.

Pinal County

T. 5 S., R. 10 E.,
Sec. 13, NW¼;
Sec. 25, NW¼, SE¼.
T. 5 S., R. 11 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 6, incl., S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½;
Secs. 8 through 15, all;
Sec. 16, SW¼;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½;
Sec. 19, lots 1 to 4, incl., E½;
Secs. 20 through 29, all;
Sec. 30, lots 1 to 4, incl., E½;
Sec. 31, lots 1 to 4, incl., E½;
Secs. 33 through 35, all.
Containing 20,024.40 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws and the mining laws.

but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: April 4, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91-8603 Filed 4-11-91; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-01-5410-10-B015; CACA 27872]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, aggregating 780.00± acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to Section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E-2845, Sacramento, California 95825 (916) 978-4820. Serial No. CACA 27872.

T. 12 S., R. 3 W., San Bernardino Meridian

sec. 21, S½SW¼;
sec. 22, N½SW¼, S½SE¼;
sec. 26, NW¼NW¼;
sec. 27, S½NW¼, NW¼SE¼, N½NE¼, SW¼NE¼;
sec. 28, W½NW¼, W½NE¼NW¼, SE¼NW¼, S½NE¼;
sec. 29, NE¼NE¼.

County—San Diego

Minerals Reservation—All coal and other minerals

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: April 4, 1991.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 91-8604 Filed 4-11-91; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Results From the First Meeting of Ad Hoc Group of Experts for the Protocol Concerning Specially Protected Areas and Wildlife in Wider Caribbean Region (SPAW Protocol)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The Service announces that the comment period on the original SPAW Protocol notice will be extended by 25 days.

DATES: Comments must be received by May 10, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone (703) 358-1708 or FTS 921-1708).

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of March 21, 1991, (56 FR 12026-12036), the FWS issued a notice identifying plant and animal species proposed for protection or management under auspices of the Cartagena Convention. The Service specifically requested comments on (1) population status and trends for species on Annexes I, II and III of the SPAW Protocol; (2) the extent or potential for trade in any non-native species listed in Annexes I, II and III; (3) the applicability of the foreign laws to provide protection appropriate to the recommended Annexes for those species endemic to foreign countries; and (4) the suitability of using Estuarine Drainage Areas (EDAs) to define the terrestrial area within the continental United States to be included in the Protocol. The comment period on the proposal originally closed on April 15, 1991. This deadline did not allow sufficient time for the Service to solicit and receive comments from numerous authorities and interested parties. Furthermore, the meeting of the Plenipotentiaries has been changed from late April to June 10, 1991 or later. The Service therefore is extending the comment period until the date shown above. (SPAW Protocol: Extension of Comment Period.)

Dated: April 8, 1991.

John D. Buffington,

Regional Director for Research and Development.

[FR Doc. 91-8695 Filed 4-11-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Concession Contract Negotiations; Rocky Mountain National Park, CO

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with a proponent offering the best proposal for providing alpine ski area and related services, food services, and facilities for the public at Hidden Valley within Rocky Mountain National Park, Colorado for a minimum period of five (5) years not to exceed ten (10) years contingent upon the level of capital expended.

EFFECTIVE DATE: May 13, 1991.

ADDRESSES: Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225, for information

as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This proposed contract requires/authorizes a maintenance and improvement program. The maintenance and improvement program was previously addressed in the National Enviornmental Policy Act document "Environmental Assessment for the Development of Hidden Valley Ski Area, dated January 1987," that was prepared in conjunction with the General Management Plan for Rocky Mountain National Park.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Office of the Superintendent, Rocky Mountain National Park.

The existing concessioner, Estes Vallay Recreation and Park District of Estes Park, Colorado, has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on March 31, 1991, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5; however, even though the incumbent concessioner has operated satisfactorily during the term of the permit, it is the intention of the existing concessioner to waive its preferential right to renew and to not submit a proposal for the new contract.

The Secretary will consider and evaluate all proposals received as a result of this notice. All proposals must be received by the Rocky Mountain Regional Director not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: December 12, 1991.

Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 91-8659 Filed 4-11-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 30, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by April 29, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Monterey County

Rancho San Lucas, 1¾ mi. SW of Jct. of Paris Valley Rd. and Rancho San Lucas entry Rd., San Lucas, 91000530

GEORGIA

Barrow County

Manning Gin Farm, Jct. of Manning Gin and McElhannon Rds., Bethlehem vicinity, 91000541

IOWA

Clinton County

Anthony, Horace, House, 1206 Anthony Pl., Camache, 91000533

Linn County

Hotel Roosevelt, 200 First Ave., NE, Cedar Rapids, 91000534

Pottawattamie County

German Bank Building of Halnut, Iowa, Jct. of Highland and Central Sts., Walnut, 91000536

Warren County

Science Hall (Architectural Legacy of Proudfoot & Bird MPS), Simpson College Campus, Indianola, 91000535

MARYLAND

Prince George's County

Baltimore-Washington Parkway (Parkways of the National Capital Region MPS), DC border near the Anacostia R., NE to just below Jessup Rd. (MD 175), Baltimore vicinity, 91000532

MISSISSIPPI

Oktibbeha County

Carroll, Thomas Battle, House, 304 S. Jackson St., Starkville, 91000531

MISSOURI

St. Charles County

St. Charles Historic District (Boundary Increase II), Bounded by Madison, Second, Jefferson and the alley behind the 100 block of S. Main St., St. Charles, 91000504

NEW YORK

Onondaga County

Oakwood Cemetery, 940 Comstock Ave., Syracuse, 91000522

Oswego County

Davis, Phineas, Farmstead (Mexico MPS), 5422 North Rd., Mexico, 91000524

Mexico Octagon Barn (Mexico MPS), 527 Ames St., Mexico, 91000527

Mexico Railroad Depot (Mexico MPS), 5530 Scenic Ave., Mexico, 91000523

Mexico Village Historic District (Mexico MPS), Main, Jefferson, Church and Spring Sts., Mexico, 91000528

Skinner, Timothy, House (Mexico MPS), 5355 Scenic Ave., Mexico, 91000526

Stillman Farmstead (Mexico MPS), NY 104 between Co. Rt. 58 and US 11, Mexico vicinity, 91000525

PENNSYLVANIA

Berks County

Hamburg Armory (Pennsylvania National Guard Armories MPS), N. Fifth St., S of I-78, Hamburg, 91000511

Blair County

Altoona Armory (Pennsylvania Naitonal Guard Armories MPS), 327 Frankstown Rd., Logan Township, Altoona vicinity, 91000507

Erie County

Corry Armory [Pennsylvania National Guard Armories MPS], 205 E. Washington St., Corry, 91000509

Lawrence County

New Castle Armory [Pennsylvania National Guard Armories MPS], 820 Frank Ave., Shenango Township, New Castle vicinity, 91000516

McKean County

Bradford Armory [Pennsylvania National Guard Armories MPS], 28 Barbour St., Bradford, 91000508.

Kane Armory [Pennsylvania National Guard Armories MPS], Jct. of Chestnut and Fraley Sts., Kane, 91000512

Mifflin County

Lewistown Armory [Pennsylvania National Guard Armories MPS], 1101 Walnut St., Derry Township, Lewistown vicinity, 91000513

Monroe County

East Stroudsburg Armory [Pennsylvania National Guard Armories MPS], 271 Washington St., East Stroudsburg, 91000510

Montgomery County

Grubb Mansion, 1304 High St., Pottstown, 91000505.

Northhampton County

College Hill Residential Historic District, Roughly bounded by McCartney St., Pierce St., Pardee St., the Forks Township line and the Delaware R., Easton, 91000506

Tioga County

Mansfield Armory [Pennsylvania National Guard Armories MPS], Smythe Park, Mansfield, 91000515

Wellsboro Armory [Pennsylvania National Guard Armories MPS], 2 Central Ave., Wellsboro, 91000521

Venango County

Oil City Armory [Pennsylvania National Guard Armories MPS], Jct. of E. 2nd St. and State St., Oil City, 91000517

Warren County

Warren Armory [Pennsylvania National Guard Armories MPS], 330 Hickory St., Warren, 91000519

Washington County

Washington Armory [Pennsylvania National Guard Armories MPS], 76 W. Haiden St., Washington, 91000520

Westmoreland County

Ligonier Armory [Pennsylvania National Guard Armories MPS], 358 W. Main St., Ligonier, 91000514

Scottdale Armory [Pennsylvania National Guard Armories MPS], 501 N. Broadway St., Scottdale, 91000518

SOUTH CAROLINA

Richland County

Elmwood Park Historic District, Roughly bounded by Elmwood Ave., Main St. and the SAL RR tracks, Columbia, 91000529

WASHINGTON

Clallam County

Sekiu School, Rice St., Sekiu, 91000539

Pacific County

Raymond Theater, 325 N. Third St., Raymond, 91000540

Pierce County

Adjutant General's Residence, Camp Murray, Tacoma vicinity, 91000537

Yakima County

Carmichael, Elizabeth Loudon, House, 108 W. Pine St., Union Gap, 91000538

[FR Doc. 91-8473 Filed 4-11-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) has been submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor (202) 275-7322. Comments regarding this information collection should be addressed to Darlene Proctor, Interstate Commerce Commission, room 2203, Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Bureau/Office: Office of Proceedings/Motor Section.

Title of Form: Small Carrier Transfer Application Form.

OMB Form Number: OMB-3120-0025.

Agency Form No.: OP-FC-1.

Frequency: At discretion of applicant to obtain a benefit.

No. of Respondents: 720 Annually.

Total Burden Hours: 2880 Annually (4 hours per respondent).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-8689 Filed 4-11-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; Sub-No. 373X]

CSX Transportation, Inc.—Abandonment Exemption—In Fayette County, PA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 4.28-mile line of railroad between milepost 0.01, at Smithfield, and milepost 4.29, near Shoaf, Fayette County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 12, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 22, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 2, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 17, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 5, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-8687 Filed 4-11-91; 8:45 am]

BILLING CODE 7035-01-M

---

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-33; Sub-No. 68X]

Union Pacific Railroad Company—Abandonment Exemption—in Fremont County, ID

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.4-mile line of railroad between milepost 26.4, near Edmonds, and milepost 28.8, near Egin, Fremont County, ID.[1]

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 12, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 22, 1991.[4] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 2, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 17, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 5, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-8688 Filed 4-11-91; 8:45 am]

BILLING CODE 7035-01-M

[1] Although styled an abandonment and discontinuance, the notice of exemption will be considered as one to abandon the line. It does not appear that any railroad other than applicant has any operations to discontinue over the involved line. An abandonment implies the discontinuance of operations over the line being abandoned.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Nicolet, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 9, 1991, a proposed Consent Decree in *United States* v. *Nicolet, Inc.*, C.A. No. 85-3060 (E.D. Pa.), DJ No. 90-11-3-84, was lodged with the United States District Court for the Eastern District of Pennsylvania. The United States' Complaint was filed under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, for reimbursement of the United States' response costs at the Locust Street and Plant piles, which comprise a portion of the "Ambler Asbestos Site" in Ambler, Pennsylvania.

The proposed Consent Decree will resolved the liability of T&N plc, the only remaining defendant in the case. T&N was the parent company of the Keasbey & Mattison Company during the years 1934-1962. Keasbey owned and operated the Locust Street and Plant piles during those years, times during which the United States has alleged that asbestos-containing materials were disposed of upon the piles. The United States has alleged that T&N was sufficiently involved in the activities of Keasbey that it was liable for Keasbey's actions.

Under the Decree, T&N will implement the remedy called for by EPA's Record of Decision regarding the Locust Street and Plant piles and pay $550,000 towards the United States' response costs in this action. EPA values the remedy at $5.144 million. (The only other defendant, Nicolet, has liquidated its assets in bankruptcy. Nicolet paid $900,000 toward the United States' response costs.)

T&N has agreed to perform operation and maintenance at the Site for 30 years. (Para. VI.F). The Decree contains in Paragraph VII the standard provision for the five-year reviews mandated under section 121(c) of CERCLA, 42 U.S.C. 9621(c), for sites at which hazardous substances will remain following completion of the remedy. In Section IX, EPA has received all of the quality assurance and quality control measures which it requested. In Section XVII, T&N has agreed to reimburse the United States for all of its oversight costs, not inconsistent with the National Contingency Plan ("NCP"), incurred following entry of the Decree.

In return for these and other obligations, T&N will receive a covenant not to sue, with standard reopener provisions provided for under section 122 of CERCLA, 42 U.S.C. 9622, and will receive the contribution protection provided for under section 113(f)(3) of CERCLA, 42 U.S.C. 9613(f)(3).

The United States has incurred thus far approximately $3 million in costs at the Locust Street and Plant piles. It has expended these funds, *inter alia*, to conduct a removal action at the Locust Street pile in 1983-84, to conduct a Remedial Investigation/Feasibility Study for the Ambler Asbestos Site, and to secure the Site.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the

Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nicolet, Inc.*, DOJ Ref. No. 90-11-3-84.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $17.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-8681 Filed 4-11-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Backgrounds

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Occupational Safety and Health Administration
Hazard Communication Standard
1218-0072
No reporting
Business or other for-profit; Small Business or Organizations
50,000 respondents; 4,000 Burden Hours; .08 hours per response
As a result of the February 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, OSHA is no longer seeking Office of Management and Budget (OMB) clearance for those paperwork activities involving the employer and the third party (employee) disclosure. Therefore, OSHA is seeking clearance for only those provisions which require the employer to allow OSHA access to various hazard communication records including hazard determination, written hazard communication programs, material safety data sheets and trade secrets. Information provided to OSHA in accordance with this standard is used to ensure that employers are complying with the provisions of the Hazard Communication Standard.

Pension and Welfare Benefits Administration
Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins
Recordkeeping
Individuals or households; Businesses or other for-profit
2,000,000 responses; 33,333 burden hours
This proposed class exemption provides relief from certain taxes imposed by the Internal Revenue Code on broker-dealers who are disqualified persons under the Code with respect to certain individual retirement accounts, regarding transactions involving American Eagle Coins.

Extension

Mine Safety and Health Administration
Mine Ventilation System Plan
1219-0016
Annually
Businesses and other for profit; small businesses or organizations
400 respondents; 24 hours per response; 9,600 total burden hours
Operators of underground metal and nonmetal mines are required to prepare written plans of the ventilation system of their mines and to update the plans annually. The information is used to insure that each operator routinely plans, reviews, and updates the mine's ventilation system; to insure the availability of accurate and current ventilation information; and to provide MSHA with an opportunity to alert the mine operator to potential hazards.

Certificate of Electrical/Noise Training, MSHA Form 5000-1 1219-0001
On occasion
Businesses and other for profit; small businesses or organizations
6,500 respondents; 0.02 hours=130 total burden hours
MSHA Form 5000-1, Certificate of Electrical/Noise Training, is required to be used by instructors to report to MSHA for certification those persons who have satisfactorily completed either a coal mine electrical training program or a noise training course.

Signed at Washington, DC this 9th day of April, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91-8680 Filed 4-11-91; 8:45 am]

BILLING CODE 4510-43-M

Wage and Hour Division, Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are detemined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor, pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume I

Maryland, MD91-23 (Apr. 12, 1991). p. 524a, p. 524b.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

Volume I

Wage Decision No. GA90-3, Modification No. 5

Pursuant to the Reguatlions, 29 CFR part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Delaware, DE91-2 (Feb. 22, 1991). p. 95, p. 97.
Florida, FL91-39 (Feb. 22, 1991). p. 197.
Georgia:
GA91-3 (Feb. 22, 1991)..... p. 223, pp. 224-227.
GA91-31 (Feb. 22, 1991)..... p. 285, p. 287.
GA91-32 (Feb. 22, 1991)..... p. 289, p. 290.
Massachusetts:
MA91-1 (Feb. 22, 1991)..... p. 421, pp. 423, 425-426.
MA91-2 (Feb. 22, 1991)..... p. 439, pp. 440, 444.
MA91-3 (Feb. 22, 1991)..... p. 453, p. 454.
Maryland, MD91-3 (Feb. 22, 1991). p. 479, p. 480.
New Jersey, NJ (Feb. 22, 1991). p. 701, p. 702.
South Carolina, SC91-21 (Feb. 22, 1991). p. 1185.

Volume II

Oklahoma, OK91-10 (Feb. 22, 1991). p. 971, p. 972.

Volume III

Washington, WA 91-2 (Feb. 22, 1991). p. 477, p. 478-479.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing

Office, Washington DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 5th day of April 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91–8501 Filed 4–11–91; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Woodbridge Corp., et al.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of March 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,486; Woodbridge Corp., Kansas City Foam Plant, Riverside, MO

TA–W–25,042; Lucas Machine Div., Cleveland, OH

TA–W–25,307; Aluminum Cruisers, Inc., Louisville, KY

TA–W–25,225; Mid-State Machine Products, Winslow, ME

TA–W–25,334; Wheaton Glass Co., Milleville, NJ

TA–W–25,316; Fulton Garment Co., Fulton, KY

TA–W–25,240; Boyertown Auto Body Works, Boyertown, PA

TA–W–25,355; Blaw Knox Equipment, Pittsburgh, PA

TA–W–25,359; Eagle Knitting Mills, Milwaukee, WI

TA–W–25,367; Homestead Industries, Inc., Coraopolis, PA

TA–W–25,342; JLG Industries, Inc., Bedford, PA

TA–W–25,343; JLG Industries, Inc., Fort Littleton, PA

TA–W–25,344; JLG Industries, Inc., McConnellsburg, PA

TA–W–25,332; W.R. Grace & Co., Polyfibron Div., Acton, MA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–25,385; FMC Corp., Naval Systems Div., Minneapolis, MN

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–25,374; Sonoco Fibre Drum, Inc., Reading, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,339; Dresser Pump Div., Harrison, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–25,286; Defini, Ltd, Newport, VT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,318; General Electric Co., Farrell Road Plant, Syracuse, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,350; Shot Point Services, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,336; Carousel Animal Fair, Inc., Gift Sales Div., Bloomington, MN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,118; Mack Trucks, Inc., Winnsboro, SC

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,319; Lindberg, Chicago, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,422; Fox Marketing, Dayton, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,499; Jack Cooper Auto Transports, Kansas City, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,300; Sea Gear, Inc., Newport, VT

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA–W–25,351; Spring Industries, Inc, ORR Plant, Anderson, SC

A certification was issued covering all workers separated on or after January 14, 1990.

TA–W–25,352; The Anderson Cotton Warehouse, Anderson, SC

A certification was issued covering all workers separated on or after January 14, 1990.

TA–W–25,134; EECO Maxi Switch, Tucson, AZ

A certification was issued covering all workers separated on or after November 16, 1989.

TA–W–25,353; Vermont American, Boone, NC

A certification was issued covering all workers separated on or after January 1, 1991.

TA–W–25,372; Smithkline Beechman, Piscataway, NJ

A certification was issued covering all workers separated on or after January 24, 1989.

TA–W–25,269; Private Label, Inc., Frackville, PA

A certification was issued covering all workers separated on or after December 12, 1989 and before December 31, 1990.

TA–W–25,282; Alpine Designs Corp., Newport, VT

A certification was issued covering all workers separated on or after December 28, 1989.

TA-W-25,301; Slalom Skiwear, Inc., Newport, VT

A certification was issued covering all workers separated on or after December 28, 1989.

TA-W-25,256; Leison Electric Corp., Little Falls, NY

A certification was issued covering all workers separated on or after December 14, 1989.

TA-W-25,273; Snugli, Inc., Denver, CO

A certification was issued covering all workers separated on or after December 12, 1989.

TA-W-25,373; Solution Fibers, Inc., Lafayette, GA

A certification was issued covering all workers separated on or after January 23, 1990.

TA-W-25,369; Microflite Simulation International, Binghamton, NY

A certification was issued covering all workers separated on or after January 25, 1990.

TA-W-25,370; Peerless Tube Co., Inc., Freehold, NJ

A certification was issued covering all workers separated on or after January 25, 1990.

TA-W-25,388; Health-Tex, Inc., 88 Martin Street, Cumberland, RI

A certification was issued covering all workers separated on or after January 6, 1991.

TA-W-25,235; B.W. Harris Manufacturing Co., Watertown, SD

A certification was issued covering all workers separated on or after January 31, 1991.

TA-W-25,356; Caza Drilling & Exploration, Gillette, WY

A certification was issued covering all workers separated on or after January 23, 1990.

TA-W-25,357; Caza Drilling & Exploration, Denver, CO

A certification was issued covering all workers separated on or after January 23, 1990.

I hereby certify that the aforementioned determinations were issued during the month of March, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 5, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-8679 Filed 4-11-91; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[Docket No. NRTL-1-88]

MET Electrical Testing Company, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of request for expansion of current recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the application of MET Electrical Testing Company, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is May 13, 1991.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the MET Electrical Testing Company, Inc., which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1-83 (48 FR 35763), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 49258, 12/6/88), and was so recognized (see FR 21136, 5/16/89), has made application for an expansion of its current recognition, for the equipment or materials listed below.

The address of the concerned laboratory is: MET Electrical Testing Company, Inc., Laboratory Division, 916 West Patapsco Avenue, Baltimore, Maryland 21230.

Expansion of Recognition

MET Electrical Testing Company, Inc. (MET), submitted an application for expansion of its current recognition to include the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL 22—Electric Amusement Machines
ANSI/UL 122—Electric Photographic Equipment
ANSI/UL 130—Electric Heating Pads
ANSI/UL 231—Electrical Power Outlets
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 1012—Power Supplies
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1411—Transformers and Motor Transformers for Use in Audio, Radio, and Television-Type Appliances
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1778—Uninterruptible Power Supply Equipment

The NRTL Recognition Program staff made an in-depth study of the details of MET's original recognition and determined that MET had the staff capability and the necessary equipment to conduct testing of products using the proposed test standards. The NRTL staff determined that an additional on-site review was not necessary since the proposed additional test standards were closely related to MET's current areas of recognition.

Preliminary Finding

Based upon a review of the details of MET's recognition and an evaluation of its present application including details of necessary test equipment, procedures, and special apparatus or facilities needed, the Assistant Secretary has made a preliminary finding that the equipment, and expertise required to certify products using the twelve aforementioned standards are within the capabilities of the laboratory, and that the proposed additional test standards (product categories) can be added to MET's recognition without the necessity for an additional on-site review.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the expansion of the current recognition of MET Electrical Testing Company, Inc., as required by 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than May 13, 1991, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210.

Copies of all pertinent documents (Docket No. NRTL-1-88), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health

Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC this 8th day of April, 1991.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 91-8678 Filed 4-11-91; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meeting

ACTION: Notice of meeting.

SUMMARY: The National Commission on Migrant Education will hold its ninth meeting on April 28 and 29, 1991, for the purpose of holding a hearing and a business session. The Commission was established by Public Law 100-297, April 28, 1988.

DATE, TIME, AND PLACE: Sunday, April 28, 1991, 8 to 10 p.m. Hyatt Regency Buffalo, Regency A-B, Two Fountain Plaza, Buffalo, New York 14202; Monday, April 29, 1991, 8 a.m. to 12 noon and 3:30 to 6:30 p.m., Buffalo Convention Center, Rooms 106 A and D, Buffalo, New York 14202.

STATUS: Open—public hearing and meeting.

Agenda:

Sunday, April 28

8 to 10 p.m.—Business Session.

Monday, April 29

8 a.m. to 12 noon and 3:30 to 5 p.m.—Scheduled witnesses will provide testimony on interstate and interagency coordination.

5 to 6:30 p.m.—Open for public testimony.

FOR FURTHER INFORMATION CONTACT: Elizabeth Skiles (301) 492-5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,

Chairman.

[FR Doc. 91-8642 Filed 4-11-91; 8:45 am]

BILLING CODE 6820-DE-M

NATIONAL SCIENCE FOUNDATION

Application of Advanced Technologies Advisory Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Applications of Advanced Technologies.

Date and Time: May 3 and 4, 1991, from 8:30 a.m. to 5 p.m. on Friday and from 8:30 a.m. to 4 p.m. on Saturday.

Place: State Plaza Hotel, Envoy Room, 2117 E Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Andrew R. Molnar, Program Director, Applications for Advanced Technologies, room 635A, Washington, DC 20550, Phone: (202) 357-7064.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exeptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-8621 Filed 4-11-91; 8:45 am]

BILLING CODE 7555-01-M

Biophysics Program Advisory Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Biophysics Program.

Date and Time: April 29, 30 and May 1, 1991 from 8 a.m. to 6 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Arthur Kowalsky, Program Director Biophysics Program, room 325, Phone (202) 357-7777; Dr. Kamal Shukla, Associate Program Director Biophysics Program, room 325, Phone (202) 357-7777.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for award.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552B (c), Government in the Sunshine Act.

Dated: April 8, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-8624 Filed 4-11-91; 8:45 am]

BILLING CODE 7555-01-M

Cell Biology Program Advisory Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cell Biology Program.

Date and Time: May 1-3, 1991, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Part Open—Closed 5/1—8:30 a.m. to 5 p.m. Open 5/1—12 p.m. to 1:30 p.m. Closed 5/3—8:30 a.m. to 5 p.m. All other times the meeting is closed.

Contact Person: Dr. Maryanna P. Henkart, Program Director, Cell Biology Program, room 321, National Science Foundation, Washington, DC 20550.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Cell Biology.

Agenda: Open—General discussion of current status and future plans of the Cell Biology Program. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Dated: April 8, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-8625 Filed 4-11-91; 8:45 am]

BILLING CODE 7555-01-M

Division of Networking and Communications Research and Infrastructure Special Emphasis Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Networking and Communications.
Dates: April 29–30, 1991.
Time: 8:30 a.m.–5 p.m. each day.
Place: Room 417, National Science Foundation, 1800 G St., NW., Washington, DC 20550.
Type of Meeting: Closed.
Agenda: Review and evaluate Research Initiation Awards proposals.
Contact: Mr. David Staudt, Associate Program Director, Cross-Directorate Programs, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Dated: April 8, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–8623 Filed 4–11–91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Law and Social Science; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Social Science.
Date/Time: May 3–4, 1991: 9 a.m. to 6 p.m. each day.
Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Dr. Felice J. Levine, Program Director for Law and Social Science, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9567.
Purpose of Panel: To provide advice and recommendations concerning research in law and social science.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: April 8, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–8626 Filed 4–11–91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357–7363.

Dated: April 8, 1991.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Room*	Date(s)	Times
Special Emphasis Panel in Mechanical and Structural Systems.	Research Initiation Awards		05/01/91 05/02/91	8:30 am–5:00 pm. 8:30 am–5:30 pm.
Special Emphasis Panel in Chemistry	Research Planning Grants & Career Advancement	340B	05/02/91	8:00 am–5:00 pm.

*At 1800 G Street, NW., Washington, DC.

[FR Doc. 91–8622 Filed 4–11–91; 8:45 am]

BILLING CODE 7555-01-M

Division of Biotic Systems and Resources Special Emphasis Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

NAME: Special Emphasis Panel in Biotic Systems and Resources.
DATE: May 2, 1991.
TIMES: 8:30 a.m. to 5 p.m.
PLACE: Room 208, National Science Foundation, 1800 G Street, NW., Washington, DC 20550
TYPE of MEETING: Closed.
AGENDA: Review and evaluate Land-Margin Ecosystems Research (LMER) proposals.
CONTACT: Dr. James T. Callahan, Division of Biotic Systems and Resources, National Science Foundation, room 215, Washington, DC 20550 (202/357–9596).

Dated: April 8, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–8627 Filed 4–11–91; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2141.
Upon Written Request Copy Available From: Securities and Exchange Commission, Office Consumer Affairs and Information Services, Washington, DC 20549.

Extension

File No. 270–105, Form 18.
File No. 270–108, Form 18–K.
File No. 270–107, Form 6–K.
File No. 270–249, Form F–1.
File No. 270–250, Form F–2.
File No. 270–251, Form F–3.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for OMB approval extension

of the following: Form 18; form 18–K; form 6–K; form F–1; form F–2; and form F–3. The forms provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly traded securities provide investors and the marketplace with adequate information. Form 18 affects 5 filers for a total of 40 burden hours; form 18–K affects 11 filers for a total of 88 burden hours; form 6–K affects 978 filers for a total of 7,824 burden hours; form F–1 affects 20 filers for a total of 47,700 burden hours; form F–2 affects 8 filers for a total of 7,280 burden hours; and form F–3 affects 5 filers for a total of 1,615 burden hours. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey of the cost of the Commission's rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549 And Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0116, 0120, 0121, 0256, 0257, 0258), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–8648 Filed 4–11–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29055; File No. SR–PSE–91–08]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Amendments to its Lead Market Maker Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 11, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes the following changes to its Lead Market Maker ("LMM") pilot program. (Additions are italicized, deletions are in brackets.)

Lead Market Maker Pilot Program

Rule 6.82(a). A Lead Market Maker ("LMM") is a member or member organization that is registered with the Exchange as a market maker and has been selected by the LMM Appointment Committee for the purpose of making transactions on the Options Floor of the Exchange in accordance with the provisions of rule 6.82. As determined by the LMM Appointment Committee, pursuant to Commentary .02 below, an LMM may be used in any one or more of the options classes opened for trading at the Exchange. Any option class [converted] *assigned* to the LMM system *on or before January 31, 1991* shall be [assigned to] *traded in* a segregated area of the Options Trading Floor designated for such purpose, *which is separate from market maker trading posts*, except as provided below. [LMM trading posts shall be separate from market maker trading posts.] *For option classes that are listed on the Exchange after January 31, 1991 and are assigned to the LMM system, such issues may be integrated with a market maker trading post, provided that ⅔rds of the market makers primarily assigned to any such market maker trading post approve the integration. Option classes that are listed on the Exchange prior to January 31, 1991 and are assigned to the LMM system may be integrated with a market maker trading post provided that the integration is also approved by both the LMM Appointment and Options Floor Trading Committees.*

(b) Provisions of the LMM System are as follows:

(1) The selection and removal of LMMs will be conducted by the LMM Appointment Committee ("Committee").

(2) Any member or member organization registered as a market maker with the Exchange is eligible for appointment as an LMM. The Committee will select that candidate who appears best able to perform the function of an LMM in the designated options class or classes. Factors to be considered for selection include, but are not limited to, the following: Experience with trading the option class; adequacy of capital; willingness to promote the Exchange as a marketplace; operational capacity; support personnel; history of adherence to Exchange rules and securities laws; trading crowd evaluation pursuant to OFPA B–13; and any other criteria specified in rule 6.82. *The allocation of particular options to an LMM shall be effected by the Options Listings Committee. In applying as an LMM for a particular class of options, the LMM shall provide the Options Listings Committee with a Statement of Commitment regarding the quality of markets and service that the LMM is willing to make in the class of options. The statement shall include, among other things, the LMM's promised maximum bid/ask spread differential and minimum depth for quoted markets. In the absence of extraordinary circumstances, as determined by the Options Floor Trading Committee, no LMM member or member organization may be assigned as an LMM to more than 10% of the options classes on the Options Trading Floor.*

(b)(3)(i) through (b)(3)(ii)—No Change.

(b)(3)(iii) Upon a final determination, the Committee shall specify whether an LMM appointment is an individual or a member organization. Appointments as a member organization must include specified nominees. The Committee may also specify any one or more conditions on the appointment in respect to any representations made in the application process, including but not limited to capital, operations, personnel, or technical resources. *With regard to an LMM issue that has been assigned to a segregated area on the Trading Floor* [Subsequent to appointment of an issue to an LMM], the issue may be reassigned to the market maker system, pursuant to subsection (b)(7), once trading volume in the issue reaches an average daily volume of 3,000 contracts at the Exchange for four consecutive months, immediately preceded by an Exchange average of 75% of the total multi-exchange trading volume for three consecutive months. *With regard to an LMM issue that has been integrated into a market maker trading post, pursuant to subsection (a), such an issue may be reassigned to the market maker system once trading volume in the issue reaches an average daily volume of 2,000 contracts for a 90 day period.*

(b)(3)(iv) through (b)(7)(ii)—No change.

(b)(7)(iii) Upon discontinuance of the LMM in a particular option class and assignment of the class to the market maker system, the market quality and service provided by the market makers in the subject option must equal or better that previously provided by the LMM, as committed to by the LMM pursuant to subsection (b)(2), above, or such quality and service as determined

by the Options Listings Committee. A failure by the market makers to provide such markets and service may result in the reversion of the option to the LMM system, as determined by the Options Listings Committee.

(b)(8) through (b)(10)(c)(5)—No change.

(10)(c)(6) The LMM shall be allocated 50% participation in transactions occurring on his disseminated bids and offers in his appointed issue(s). *However, with regard to option classes that are integrated with market maker trading posts, pursuant to Subsection (a), in the event that trading volume in such issues reaches an average daily volume of 2,000 contracts at the Exchange for 45 calendar days, the LMM shall only be allocated 25% participation in transactions occurring on his disseminated bids and offers in his appointed issue(s). The guaranteed 25% allocation shall continue until such time that the average daily volume at the Exchange falls below 2,000 contracts for 45 days, or until the issue is converted to the market maker system, pursuant to subsection (b)(3)(iii).* LMM participation may be greater than *the 50% and 25% figures* as a result of successful competition by means of "public outcry." The LMM at his own discretion may direct his participation to competing public orders in the crowd. Public orders placed in the book will take priority pursuant to Exchange rules. Oversight and enforcement shall be the responsibility of the OBO.

10(c)(7) through Commentary .05—No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The Exchange's Lead Market Maker ("LMM") program was initially established to enhance the Exchange's ability to compete in the options trading market in anticipation of the believed imminent multiple trading system. After several months since implementation of the LMM program, and in further preparedness of the multiple trading system, the Exchange now proposes several amendments to its LMM program.

The general basis for the proposed rule changes is to elicit further interest in the LMM program from prospective LMMs. At present, the Exchange believes that the structure of the LMM system is not sufficient to generate enough interest from prospective LMMs, as necessary for the viability of the program and consequently to adequately compete in the multiple trading environment.

In order to attract such interest in the program, the Exchange proposes to permit the integration of certain LMM classes with market maker trading posts, provided that two-thirds of the market makers primarily assigned to any such post approve the integration. The Exchange believes that such integration would enable prospective LMMs to continue trading non-LMM options while performing their LMM obligations.

The segregation of LMM classes was initially formulated as a compromise to market makers who feared the monopolization of trading by LMMs. However, this fear is now addressed and answered by requiring two-thirds approval of any market maker trading post. In addition, the proposed rule change precludes monopolization in its provision that, in the absence of extraordinary circumstances, no LMM may be allocated more than 10% of the options classes on the trading floor.

Furthermore, the proposed rule change protects non-LMM market makers by reducing guaranteed LMM trading participation in integrated trading posts, from 50% to 25%, once average daily volume in any such series reaches 2,000 contracts at the Exchange for 45 trading days. In addition, whereas a segregated LMM issue may be converted to the market maker system once trading volume in the issue reaches 75% of the multi-exchange volume for three consecutive months, followed by an average daily volume of 3,000 contacts for an additional four consecutive months, the proposed rule provides that an integrated issue shall be converted to the market maker system once average daily volume reaches just 2,000 contracts for a 90 day period.

The previous and proposed provisions relating to conversion of an LMM issue to the market maker system have been designed to retain LMM status of a multiply traded issue until such time successful order flow in such issue has been attained. In order to retain such order flow following conversion to the market maker system, the proposed rule change provides that the market makers must continue excellent quality and service, or risk reversion of the issue to the LMM system.

One last proposed change to the LMM rule is the delineation that, consistent with article IV, section 7(a) of the Exchange Constitution, the allocation of LMM issues is the responsiblity of the Options Listings Committee. In addition, the proposed amendment delineates current Exchange policy that, in applying for particular classes of options, LMMs must provide the Options Listings Committee with a Statement of Commitment regarding the quality of markets and service that the LMM is willing to provide in the options class.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934, in that it will facilitate transactions, will facilitate a free and open market and will promote the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-PSE-91-08 and should be submitted by May 3, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 5, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-8651 Filed 4-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29054; File No. SR-PHLX-91-01]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Margin Rules Governing Letters of Credit for Foreign Currency Options

On January 28, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change to amend its rules governing the issuance of letters of credit by banks on behalf of their customers to satisfy foreign currency options margin obligations.

The proposed rule change was published for comment in Securities Exchange Act Release No. 28871 (February 11, 1991), 56 FR 7440. No comments were received on the proposal rule change.

Currently, PHLX rule 722(c)(2)(J), and Commentaries .02-.10 thereunder provide for the use by customers of letters of credit to satisfy foreign currency options margin obligations. These provisions require that a bank issuing a letter of credit on behalf of a customer be specifically approved by the Exchange for that purpose. In order to issue a letter of credit for a PHLX customer, a bank must meet specific shareholder equity, credit rating and other criteria and thereafter submit quarterly and annual financial statements to the Exchange.[3] The PHLX proposes to amend its rule 722, "Margin Accounts," to allow any bank approved by The Options Clearing Corporation ("OCC"), pursuant to OCC rule 604(c), to issue a PHLX customer letter of credit to satisfy foreign currency options margin obligations arising out of transactions on the PHLX. Thus the approval of the PHLX proposal will permit investors in PHLX foreign currency options markets to satisfy their foreign currency margin obligations with letters of credit from either banks approved by the Exchange pursuant to its program or banks approved by OCC. Moreover, in order to address an existing discrepancy between the PHLX and OCC programs, the PHLX proposes to amend Commentary .03 of rule 722 to provide that the Exchange's qualification standards for U.S. financial institutions issuing letters of credit will be identical to OCC's standards.[4]

The PHLX submitted its proposal because both banks and PHLX foreign currency options investors have expressed dissatisfaction with the existing PHLX letters of credit program. Specifically, because many banks already comply with OCC standards and reporting requirements for OCC's letters of credit program, these banks believe that the requirements for the PHLX letters of credit program are burdensome and duplicative. Moreover, the PHLX notes that some customers complain that banks with whom they have well-established relationships receive only infrequent requests to issue customer letters of credit and these banks are unwilling to participate in the PHLX letters of credit program for the benefit of only a few customers.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6 and the rules and regulations thereunder.[5] Specifically, the proposed rule change is designed to facilitate the use by customers of letters of credit to satisfy the margin obligations of their foreign currency options positions.[6] Currently, investors who participate in the Exchange's foreign currency options market often must establish new banking relationships solely for the purpose of obtaining a letter of credit from a bank that issues letters of credit pursuant to the PHLX program. Under the PHLX proposal, a customer would be able to use its existing bank if that bank has an existing relationship with OCC rather than search for a bank that participates, or is willing to participate, in the PHLX letters of credit program. Thus, this proposal will assist small and medium-sized institutional investors in obtaining letters of credit. In addition, the Commission believes broadening the range of banks eligible to issue PHLX customer letters of credit may contribute to more transactions in Exchange-traded foreign currency options, thereby contributing to market depth and liquidity.

Finally, since the PHLX's proposed standards for financial institutions would conform to OCC's standards under ther PHLX proposal, the Commission believes that there would be no significant decrease in the quality of the issuing banks or the level of oversight of these banks. In this regard, the PHLX still retains the right in its sole discretion to refuse or revoke approval of any financial institution as an issuer of letters of credit at any time.[7]

It therefore is ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR-PHLX-91-01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[FR Doc. 91-8650 Filed 4-11-91; 8:45 am]

BILLING CODE 8010-01-M

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] See Commentaries .03 and .06 to PHLX Rule 722.

[4] Commentary .01 of OCC rule 604 authorizes OCC to approve a U.S. bank or trust company as an issuer of letters of credit provided that the institution has, at the time of its approval and continuously thereafter, shareholder equity of $100,000,000 or more. Previously, the PHLX has required such U.S. institutions to have a minimum of $200,000,000 of shareholder's equity. Accordingly, the PHLX proposes to reduce the required shareholder equity for U.S. institutions to $100,000,000.

[5] 15 U.S.C. 78f (1982).

[6] Of course, PHLX customers are not required to use letters of credit to satisfy their margin obligations for foreign currency options positions. They may also maintain securities or cash accounts pursuant to the Regulations of the Board of Governors of the Federal Reserve System.

[7] See Commentary .09 to PHLX rule 722.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1989).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

April 8, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Public Storage Properties VIII
Class A Common Stock, $.01 Par Value (File No. 7–6704)
Public Storage Properties IX
Class A Common Stock, $.01 Par Value (File No. 7–6704)
Public Storage Properties X
Class A Common Stock, $.01 Par Value (File No. 7–6705)
Public Storage Properties XI
Class A Common Stock, $.01 Par Value (File No. 7–6706)
Public Storage Properties XII
Class A Common Stock, $.01 Par Value (File No. 7–6707)
Trimas Corporation
Common Stock, $.01 Par Value (File No. 7–6708)
Amsco International Inc.
Common Stock, $.01 Par Value (File No. 7–6709)
E-Z Serve Corporation
Common Stock, $.01 Par Value (File No. 7–6710)
Tejas Power Corporation
Class A Common Stock, $.01 Par Value (File No. 7–6711)
Autozone, Inc.
Common Stock, $.01 Par Value (File No. 7–6712)
Barnett Banks, Inc.
Series A $4.50 Cumulative Convertible Preferred Stock, $.10 Par Value (File No. 7–6713)
Comerica Incorporated
Common Stock, $5.00 Par Value (File No. 7–6714)
Illinois Central Corporation
Common Stock, $.001 Par Value (File No. 7–6715)
Mid-American Waste Systems, Inc.
Common Stock, $1.00 Par Value (File No. 7–6716)
Western Waste Industries
Common Stock, Par Value (File No. 7–6717)
Yankee Energy System, Inc.
Common Stock, $5.00 Par Value (File No. 7–6718)
Furr's/Bishop's Incorporated
Class A Common Stock, $.01 Par Value (File No. 7–6719)
Furr's/Bishop's Incorporated
Series A $9.00 Convertible Preferred Stock, $.01 Par Value (File No. 7–6720)
Pet, Incorporated
Common Stock, $.01 Par Value (File No. 7–6721)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 29, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–8619 Filed 4–11–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 8, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Raymond James Financial, Inc.
Common Stock, $0.01 Par Value (File No. 7–6694)
Van Kampen Merrit Intermediate Term High Income Trust Shares of Beneficial Interest, $0.01 Par Value (File No. 7–6695)
American Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–6696)
Nuveen Select Quality Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–6697)
Uno Restaurant Corporation
Common Stock, $.01 Par Value (File No. 7–6698)
Porta Systems Corporation
Common Stock, $.01 Par Value (File No. 7–6699)
Western Waste Industries
Common Stock, No Par Value (File No. 7–6700)
Comerica, Inc.
Common Stock, $5 Par Value (File No. 7–6701)
Autozone, Incorporated
Common Stock, $.01 Par Value (File No. 7–6702)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 29, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–8620 Filed 4–11–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18084; 812–7574]

PaineWebber America Fund, et al.; Application

April 9, 1991.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: PaineWebber America Fund, PaineWebber Atlas Fund, PaineWebber California Tax-Exempt Income Fund, PaineWebber Classic Regional Financial Fund Inc., PaineWebber Fixed Income Portfolios, PaineWebber Investment Series, PaineWebber Managed Municipal Trust, PaineWebber Master Series, Inc., PaineWebber Municipal Series, PaineWebber Olympus Fund (the "Funds"), Mitchell Hutchins Asset Management Inc. ("Mitchell Hutchins"), and PaineWebber Incorporated ("PaineWebber").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the

Funds (a) To issue three classes of shares representing interests in the same portfolio of securities, one of which would convert into another class after a specified period to permit investors to benefit from lower rule 12b–1 distribution fees, and (b) to assess a contingent deferred sales load ("CDSL") on certain redemptions of shares of one of the classes, and to waive the CDSL in certain cases.

FILING DATES: The application was filed on August 7, 1990 and amendments were filed on December 17, 1990, February 20, 1991, March 15, 1991, and April 3, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on April 30, 1991, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Several of the Funds consist of multiple series, each of which has separate investment objectives and policies and segregated assets. Mitchell Hutchins (the "Manager") will act as investment adviser and principal underwriter to each Fund. Mitchell Hutchins, in turn, has an exclusive dealer arrangement with PaineWebber permitting PaineWebber and its correspondent firms to sell the Funds' shares. Mitchell Hutchins, together with PaineWebber, are referred to as the "Distributor."

2. Currently, certain Funds offer their shares to the public subject to a CDSL (the "CDSL Funds"). These Funds pay the Distributor a fee pursuant to rule 12b–1 plans. The remainder of the Funds are offered to investors at net asset value plus a front-end sales load ("Front-End Load Funds"). Most of these Funds also pay rule 12b–1 fees to Mitchell Hutchins, although the rate of such payments is substantially lower than that applicable to the CDSL Funds. In addition, several Funds currently offer their shares to investors subject to a front-end sales load but without imposition of a rule 12b–1 fee.

3. Applicants request that any relief also apply to any open-end management investment company that now or in the future is in the same "group of investment companies" with the Funds, as defined in rule 11a–3.

4. Applicants propose to establish a multiple distribution arrangement (the "Flexible Pricing System") to enable each of the Funds to offer investors the option of purchasing shares that either would be subject to a conventional front-end sales load and a rule 12b–1 service fee ("Front-End Option"), or subject to a CDSL and higher rule 12b–1 distribution and service fees ("Deferred Option"). In addition, certain Funds will offer a third class of shares solely to tax-exempt retirement plans of PaineWebber Group Inc. and its affiliates, certain unit investment trusts sponsored by PaineWebber (the "UITS"), and to certain qualified retirement plans. Such retirement plans and the PaineWebber plans are referred to as the "Benefit Plans." These shares will be offered without imposition of either a sales charge or a distribution or service fee.

5. If the requested relief is granted, each Fund will be able to create two new classes of shares. The classes created by each Fund depends on the distribution method currently used by that Fund (*e.g.*, if the Fund currently issues securities subject to a CDSL, the Fund may create a class subject to a front-end sales load). Securities subject to the Front-end Option will be designated Class A, securities subject to the Deferred Option will be designated Class B, and securities not subject to any sales load or rule 12b–1 plan payment will be designated Class C. The actual creation and issuance of these additional classes will be made on a Fund by Fund basis, and some Funds may not choose to create a second or third class of shares.

6. Each class will represent interests in the same portfolio of investments of a Fund and will be identical except that (a) The fees charged to the Class A shares and Class B shares under each such Class's rule 12b–1 plan only will be applied against each such class; (b) Class B will pay both a distribution fee and a service fee, Class A will pay a service fee, and Class C will not be subject to any distribution or service fee; (c) a higher transfer agency fee may be imposed on Class B shares than on either Class A or Class C shares; (d) a higher transfer agency fee may be imposed on Class A shares than on Class C shares; (e) shareholders of each of the Class A and Class B shares will have exclusive voting rights with respect to the rule 12b–1 plan applicable to their respective class; (f) only the Class B shares will have a conversion feature providing for the automatic conversion to Class A shares approximately six years after issuance; and (g) each class will have different exchange privileges.

7. Under the Front-End Option, an investor will purchase Class A shares at net asset value plus a front-end sales load. The sales load generally will be reduced for larger purchases and under a right of accumulation. The sales load also will be subject to certain other reductions permitted by section 22(d) of the Act and rule 22d–1 thereunder and set forth in the registration statement of each Fund. In addition, Class A shareholders will be assessed an ongoing service fee under a rule 12b–1 plan at an expected annual rate of up to .25% of average daily net assets. Proceeds from the sales load and service fee primarily will be used to pay commissions for the sale of Class A shares and to defray expenses associated with providing services to investors choosing the Front-End Load Option.

8. Investors choosing the Deferred Option will purchase Class B shares at net asset value without the imposition of a sales load at the time of purchase. Shares purchased under the Deferred Option will be subject to a rule 12b–1 plan with a service fee of up to .25% and a distribution fee at an expected annual rate of up to .75% of average daily net assets. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period of years from the investor's purchase (not to exceed six years) may be subject to a CDSL paid to the Distributor. The Deferred Option is designed to permit the investor to purchase a Fund's shares without the assessment of a front-end sales load. The CDSL proceeds and rule 12b–1 fees will be used to pay commissions and other costs associated with the sale of Class B shares as well as the expenses in servicing these accounts.

9. Each Fund's rule 12b–1 plan currently obligates the Fund to pay a distribution fee to Mitchell Hutchins as compensation for its services, not as reimbursement for specific expenses incurred. Thus, if the Manager's specific expenses exceed the distribution fee, the Fund is not obligated to pay more than that fee. If, however, the Manager's expenses are less than its distribution fee, the Manager will retain the full fee and realize a profit.

10. Class C shares will not be subject to any sales load nor to any rule 12b–1 plan fees. This Class will be offered exclusively to the following three categories of investors: (a) Qualified retirement plans, other than individual retirement accounts and self-employed retirement plans, with total assets in excess of $1 million; (b) tax-exempt retirement plans of PaineWebber Group, Inc. and its affiliates; and (c) certain UITs sponsored by PaineWebber. As to the first category, Class C shares will be offered only to plans in which a trustee is vested with investment discretion as to plan assets. Applicants will exclude self-directed plans, where an individual plan beneficiary can make an investment decision. The second category of investors is narrower, with only a single investor, PaineWebber Savings & Investment Plan ("SIP"), currently contemplated. SIP's assets also are held by the trustee and participants' preretirement access to the assets would give rise to adverse tax consequences. The third category of offerees is restricted to UITs that could be created only upon receipt of a separate order of exemption pursuant to section 6(c) of the Act. The UITs will invest their assets in fixed pools of securities, which will include both Class C shares and other securities such as U.S. Treasury bonds. The trustee of the UIT and of the retirement plans will possess the investment and voting power with respect to the Fund shares (with the exception of the SIP plan). The ultimate plan beneficiary (except for the beneficiaries of the SIP plan) or UIT shareholder will hold no direct interest in the Class C shares of a Fund and will not be involved in the decision to purchase, sell, or vote such shares. An investor eligible to purchase Class C shares will not be permitted to purchase Class A or Class B shares.

11. The Distributor will furnish the Directors/Trustees of the Funds with quarterly and annual statements of distribution revenues and expenditures for each class of shares ("Statements"), in compliance with paragraph (b)(3)(ii) of rule 12b–1, to enable the Directors/Trustees to make the findings required by paragraphs (d) and (e) of rule 12b–1. In the Statements, only distribution expenditures properly attributable to the sale of each class of shares will be used to support the distribution and/or service fee attributable to such class. Principal direct expenses will be payments made to investment executives for selling shares of either Class A or Class B and will require no allocation between those classes. Distribution expenses attributed to the sale of both Classes A and B will be allocated to each class based upon the ratio in which the sales of each class bears to the total sales of Class A and Class B shares. Distribution expenses attributable to sales of Class C shares, if any, will be borne by Mitchell Hutchins or PaineWebber and will not be borne by any class of shares. This sales structure is designed to reflect the different distribution costs and related administrative expenses incurred in connection with the sale of shares of Class A and Class B and those made in sales to the institutional investors of Class C.

12. Class B shares of a Fund, other than those purchased through the reinvestment of dividends and distributions, will automatically convert to Class A shares of that Fund at net asset value on the sixth anniversary of the purchase of the Class B shares.

13. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares also will be Class B shares. However, for purposes of conversion to Class A, all such Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Fund account (other than those in the sub-account referred to in the preceding sentence) convert to Class A, a pro rata portion of the Class B shares in the sub-account also will convert to Class A. The portion will be determined by the ratio that the shareholder's Class B shares converting to Class A bears to the shareholder's total Class B shares not acquired through dividends and distributions.

14. The conversion of Class B shares to Class A shares is subject to the continuing availability of a ruling of the Internal Revenue Service that payment of different dividends on Class A and Class B shares does not result in the Fund's dividends or distributions constituting "preferential dividends" under the Internal Revenue Code ("IRC"), and the continuing availability of an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under federal income tax law. The conversion of Class B shares to Class A shares may be suspended if such an opinion is no longer available. In the event that conversions of Class B shares do not occur, Class B shares would continue to be subject to the higher distribution fee and any higher transfer agent costs attending the Deferred Option for an indefinite period.

15. Class B shares of a Fund will be exchangeable only for Class B shares of other Funds and shares of certain money market funds. Class A shares of a Fund will be exchangeable only for Class A shares of the other Funds and shares of certain money market funds distributed by the Manager. Similarly, Class C shares will be exchangeable only for Class C shares of the other Funds and certain money market funds. If money market fund shares were obtained through an exchange offer of Class A or Class B shares for the money market shares, these money market fund shares may then be exchanged for the class of shares traded in the original exchange. The offer of exchange between money market fund shares and Class A or Class B shares will not extend to money market fund shares that are initially purhased for cash.

16. Under the Flexible Pricing System, all expenses incurred by a Fund will be borne on a pro rata basis by each class except that each class' net asset value and expenses will reflect the expenses of the Class A and Class B rule 12b–1 plans, the transfer agency fees of each class, and any incremental expenses properly attributable to one class which the Commission shall approve by an amended order. Because of the ongoing distribution fee and potentially higher transfer agency fee paid by the holders of Class B shares, the net income attributable to and the dividends payable on Class B shares would be lower than the net income and dividends associated with Class A shares. In addition, because the Class C shares will not bear any rule 12b–1 fees and the transfer agency fees may be lower than those attributed to Class A and Class B shares, the net income attributable to and the dividends payable on Class C shares will be higher than the net income and dividends associated with the other classes.

17. Applicants will offer the Class A shares and Class B shares to the public through a single prospectus. Class C shares, which will be offered exclusively to the Benefit Plans and the UITs, will either be offered in the same prospectus or solely through a separate prospectus. The Fund will disclose in its prospectus material information applicable to each class of shares offered through the

prospectus. If Class C shares are offered solely through a separate prospectus, the prospectus for Class A and Class B shares of that Fund will identify the existence of the Class C shares of the Fund and will identify the entities eligible to purchase such shares, and the Class C prospectus will identify the existence of the Fund's Class A and Class B shares. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. (*See* condition 10 under Applicants' Conditions for the specific information that must be disclosed.)

18. Applicants also seek an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to permit the Funds to assess a CDSL on redemptions of Class B shares, and to permit the Funds to waive the CDSL for certain types of redemptions. Each Fund's particular CDSL schedule (the rate and time period used in calculating the CDSL) may vary, but the CDSL will comply with the NASD sales load limitations and the provisions of proposed rule 6c–10. The amount of the CDSL will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

19. The CDSL will not be imposed on redemptions (a) On shares purchased more than six years prior to the redemptions (the "CDSL period") or (b) on Class B shares derived from reinvestment of distributions. Furthermore, no CDSL will be imposed on an amount which represents an increase in the shareholder's account resulting from capital appreciation. In determining the rate and applicability of a CDSL, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital gain distributions, and finally of other shares held by the shareholder for the longest period of time. In addition, redemption requests placed by shareholders who own both Class A and Class B shares of a Fund will be satisfied first by redeeming the shareholder's Class A shares, unless the shareholder has made a specific election to redeem Class B shares. The Funds' compliance procedures will reflect this policy.

20. Applicants seek the ability to waive the CDSL on redemptions (a) Following the death or disability, as defined in section 72(m)(7) of the IRC, of a shareholder if redemption is made within one year of death or disability, (b) in connection with distributions from an IRA or other qualified retirement plan as described in the application, (c) in connection with redemptions of shares purchased by officers, directors or trustees, and employees of the Funds, the Distributor or affiliated companies, and by members of the immediate families of such persons, (d) in connection with redemptions pursuant to a Fund's systematic withdrawal plan, (e) in connection with redemptions by shareholders with accounts in excess of $1 million with additional reductions of the CDSL for redemptions by shareholders with accounts in excess of $2.5 million, (f) in connection with redemptions the proceeds of which are reinvested in shares of the Fund within 365 days after such redemption,[1] (g) in connection with redemptions effected by advisory accounts managed by Mitchell Hutchins, (h) in connection with redemptions by tax-exempt employee benefit plans that occurred as a result of an enactment of any law or regulation making investments in the Funds improper, (i) in connection with redemptions by any registered investment company as a result of a merger, acquisition of assets, or by any other transaction between the company and a Fund, and (j) in connection with the exercise of an exchange privilege whereby an investor exchanges Class B shares of a Fund for Class B shares of another Fund.

21. If the Directors/Trustees of a Fund determine to discontinue the waiver of a CDSL, the disclosure in the Fund's prospectus will be appropriately revised. Also, any Class B shares purchased prior to the termination of such waiver will have the CDSL waived as provided in the Fund's prospectus at the time of the purchase of such shares.

Applicants' Legal Analysis

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) to the extent the Flexible Pricing System may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent the allocation of voting rights under the Flexible Pricing System may violate the provisions of 18(i). Applicants believe that the Flexible Pricing System does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds since all such shares will participate pro rata in all of a Fund's income and expenses with the exception of the differing rule 12b–1 fees and transfer agency costs.

2. Applicants believe that the Flexible Pricing System will both facilitate the distribution of shares by a Fund and provide investors with a broader choice as to the method of purchasing shares. In addition, applicants believe owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would, potentially, be spread over a greater number of shares than they would be otherwise. Moreover, the establishment of the Class C shares would permit the Funds to offer their shares to the Benefit Plans under arrangements that would reflect the predominant pricing method for institutional products and to the UITs under arrangements that accurately reflect the reduced costs of issuance of shares to the UITs. Class C then may attract assets to the Funds to the benefit of the holders of all classes.

3. The Funds are aware of the need for full disclosure of the proposed Flexible Pricing System and of the differences among the various classes of shares in each Fund's prospectus (and, to the extent necessary, the statement of additional information). Because of the substantial distinctions between Class A and Class B offerees and the offerees of Class C, applicants believe, however, that presentation of certain Class C data to investors who are eligible to purchase only Class A or Class B shares may be confusing or potentially misleading. Class C is offered to a very limited group which will not overlap with the general retail investors of Class A or Class B. Legal obstacles also exist that prevent many of the Class C offerees from investing in the other classes. Class C is designed to provide these investors with an opportunity to invest in the Funds that were previously unavailable to them. In light of the foregoing, if applicants choose to offer Class C through a separate prospectus, the prospectus for Class A and Class B shares will identify the existence of Class C and the entities eligible to purchase the shares but will not include the particular performance and expenses data of Class C. Similarly, the Class C prospectus will identify only the existence of Class A and Class B shares.

4. Applicants believe that the imposition of the CDSL on the Class B shares of the Funds is fair and in the

[1] Any credit given to an investor for reinvestment in a Fund will be paid by the Distributor, not by the Fund.

best interests of their shareholders. The proposed Flexible Pricing System permits Class B shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of Class B shares of the Funds than if a sales load were imposed at the time of purchase, as is the case with Class A shares.

5. The imposition of the CDSL is appropriate in light of the relationship between the CDSL and the rule 12b–1 plans to be adopted by the Funds. When Class B shares are redeemed prior to the expiration period, these investments will no longer contribute to the annual distribution fee. Applicants believe that it is fair to impose on the withdrawing Class B shareholder a lump sum reflecting the expenses incurred by the Distributor that have not been recovered through payments by the Fund.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

A. Conditions Relating to the Flexible Pricing System

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to: (a) The impact of the respective rule 12b–1 plan payments made by each of the Class A shares and Class B shares of a Fund, or, in the case of the Class C shares, the absence of any such distribution or service fees, any higher incremental transfer agency costs attributable solely to the Class B or Class A shares of a Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to rule 12b–1 plans, (c) the different exchange privileges of the various classes of shares as described in the prospectuses (and as more fully described in the statements of additional information) of the Funds, (d) the conversion feature applicable only to the Class B shares, and (e) the designation of each class of shares of a Fund.

2. The Directors/Trustees of each of the Funds, including a majority of the Independent Directors/Trustees, shall have approved the Flexible Pricing System prior to the implementation of the Flexible Pricing System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Flexible Pricing System will reflect in detail the reasons for determining that the proposed Flexible Pricing System is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the Commission staff.

3. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Directors/Trustees, including a majority of the Independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Manager and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class of shares first becomes effective.

5. The Directors/Trustees of the Funds will receive quarterly and annual Statements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of either the Class A or Class B shares will be used to support the rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale of a specific class of shares will not be presented to the Directors/Trustees to support rule 12b–1 fees charged to shareholders of such class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors/Trustees in the exercise of their fiduciary duties under rule 12b–1.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that fee payments made under the rule 12b–1 plans relating to the Class A and Class B shares will be borne exclusively by each such class and except that any higher incremental transfer agency costs attributable solely to Class B or Class A shares will be borne exclusively by such class.

7. The methodology and procedures for calculating the net asset value and dividends/distributions of the three classes and the proper allocation of income and expenses among the various classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to applicants, which has been filed as an exhibit to amendment No. 1 to the application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System," and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may

be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (7) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

9. The prospectuses of the Funds will contain a statement to the effect that an investment executive may receive different compensation with respect to one particular class of shares over another in the Fund.

10. The Distributor will adopt compliance standards as to when Class A, Class B, and Class C shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards. Applicants' compliance standards will require all investors eligible to purchase Class C shares of a Fund offering such shares to invest in Class C, rather than Class A or Class B, shares of such Fund.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Flexible Pricing System will be set forth in guidelines which will be furnished to the Directors/Trustees as part of the materials setting forth the duties and responsibilities of the Directors/Trustees.

12. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares offered through the prospectus. Class A and Class B shares will be offered and sold through a single prospectus. If Class C shares of a Fund are offered solely through a separate prospectus, the prospectus for the Class A and Class B shares of that Fund will identify the existence of the Class C shares of the Funds and will identify the entities eligible to purchase such shares, and the Class C prospectus will identify the existence of the Fund's Class A and Class B shares. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class A or B shares, it will disclose the expenses and/or performance data applicable to both classes. Advertising materials reflecting the expenses or performance data for Class C shares will be available only to Class C eligible investors. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present Class A and Class B shares.

13. The Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

14. Class B shares will convert to Class A shares on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee or other charge.

B. Condition Relating to the CDSL

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (see Investment Company Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–8690 Filed 4–11–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18083; File No. 812–7660]

Charter National Life Insurance Co., et al.;

April 8, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Charter National Life Insurance Company ("Charter"), Charter National Variable Annuity Account (the "Charter Variable Account"), First Charter Life Insurance Company ("First Charter"), First Charter Variable Annuity Account (the "First Charter Variable Account"), CNL, Inc. ("CNL") and Scudder Fund Distributors, Inc. ("Scudder").

RELEVANT 1940 ACT SECTION: Order requested pursuant to section 11 of the Act.

SUMMARY OF APPLICATION: Applicants seek an order under sections 11(a) and 11(c) of the Act approving the terms of arrangements whereby certain purchasers of flexible premium variable deferred annuity contracts ("Contracts") issued by Charter or First Charter may direct Scudder, as the distributor of any registered open-end investment companies managed by Scudder, Stevens & Clark, Inc. with shares offered to the general public (the "Scudder Public Funds"), to forward the proceeds of the redemption of all or any specified portion of one or more of their existing Scudder Public Fund share holdings directly to Charter or First Charter as purchase payments for Contracts.

FILING DATE: The application was filed on December 20, 1990 and amended on March 28, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on April 30, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Charter and CNL, 8301 Maryland Avenue, St. Louis, Missouri 63105; First Charter, 315 Park Avenue South, New York, New York 10010; Scudder, 175 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Staff Attorney, at (202) 272–3045, or Nancy M. Rappa, Senior

Attorney, at (202) 272–2622, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Charter is a stock life insurance company incorporated under the laws of the State of Missouri. It is a wholly-owned subsidiary of Leucadia National Corporation, a diversified New York holding company, the common stock of which is listed on the New York and Pacific Stock Exchanges. Charter is authorized to conduct business in 49 states, the District of Columbia, and Puerto Rico.

2. The Charter Variable Account is a separate investment account of Charter established to support Charter Contracts. It is registered as a unit investment trust under the Act. The Charter Variable Account currently is divided into six subaccounts, each of which invests exclusively in a corresponding investment portfolio of the Scudder Variable Life Investment Fund (the "Fund"). In the future, Charter may create additional separate accounts for purposes of funding the Contracts.

3. First Charter, a wholly-owned subsidiary of Charter, is a stock life insurance company incorporated under the laws of the State of New York. First Charter is engaged principally in the offering of annuity contracts in the State of New York.

4. The First Charter Variable Account is a separate investment account of First Charter establishment to support First Charter Contracts. It is registered as a unit investment trust under the Act. The First Charter Variable Account currently is divided into six subaccounts, each of which invests exclusively in a corresponding investment portfolio of the Fund. In the future, First Charter may create additional separate accounts for purposes of funding the Contracts.

5. CNL, a wholly-owned subsidiary of Charter, is the principal underwriter of the Contracts. CNL is registered with the Commission as a broker-dealer and is a member of the National Association of Securities Dealers ("NASD"). For purposes of distributing the Contracts, CNL has contracted with Scudder directly for its services in promoting, distributing and administering the Contracts and indirectly, through Scudder Insurance Agency of New York, Inc., a subsidiary of Scudder, in connection with the promotion, distribution and administration of the First Charter Contracts. CNL receives compensation for its services to Charter and First Charter, as well as reimbursement for expenses associated with the performance of certain distribution functions, in connection with the Contracts. Fees and expenses associated with the distribution of the Contracts will be paid by Charter and First Charter, and will be charged to a Contract owner or the relevant Variable Account.

6. Scudder is the distributor of the shares of certain registered open-end investment companies managed by Scudder, Stevens & Clark, Inc. whose shareholders may be involved in the arrangements which are the subject of the application. Scudder is the principal underwriter of the Fund; it is not affiliated with Charter, First Charter, or CNL. Scudder is registered with the Commission as a broker-dealer and is a member of the NASD.

7. The Charter Contracts are no sales load flexible premium variable deferred annuities designed to provide for accumulation of capital on a tax-deferred basis for retirement and other long-term purposes. A Charter Contract owner may direct that payments accumulate on a completely variable basis, a completely fixed basis, or a combination variable and fixed basis. To the extent that a Contract owner elects to have payments accumulate on a variable basis, all or a portion of any payment may be allocated to one or more of the subaccounts of the Charter Variable Account. No commission or sales charge is deducted from purchase payment(s) or from amounts payable upon full or partial surrender of the Contract; however, Charter does deduct any applicable premium taxes and reserves the right to deduct federal, state or local taxes (other than premium taxes) prior to making allocations among the subaccounts if such taxes are imposed in the future. Certain charges are on may in the future be deducted on a periodic basis from the account value of each Charter Contract, including (1) a daily mortality and expense risk charge at the rate equivalent to a maximum annual rate of .70% of the net assets of each Charter subaccount attributable to the Charter Contract, of which approximately .50% is designed to cover mortality risks and approximately .20% is designed to cover the expense risks assumed by Charter in connection with the Charter Contracts; (2) a daily administrative charge which is guaranteed not to increase for the duration of the Charter contract (at a rate equivalent to an annual rate of .30% of the net assets in each Charter subaccount attributable to the Charter Contract); (3) a records maintenance charge of up to $40 per year, deducted annually in advance; (4) Federal, State or local taxes other than premium taxes, if applicable in the future; and (5) transfer fees of $10 from the account value with respect to each Charter subaccount from which funds are transferred for the third and each subsequent transfer request made by a Contract owner during a single contract year. (The records maintenance and transfer fees are not currently imposed.) The value of the net assets of the Charter Variable Account reflects the investment advisory fee and other expenses incurred by the Fund.

8. The First Charter Contracts also are no sales load flexible premium variable deferred annuities. The First Charter Contracts are virtually identical to the Charter Contracts, with the following exceptions; Under the Contract, First Charter may deduct an annual records maintenance charge of up to $40 from account value for each First Charter Contract at the end of each contract year. The First Charter Contract permits First Charter to deduct $20 from the account value for the third and each subsequent transfer request made by a Contract owner during a single year. (These records maintenance and transfer fees are not currently imposed.)

9. The Fund is registered under the Act as a diversified, open-end investment company. The Fund, organized as a Massachusetts business trust, is designed to provide an investment vehicle for variable annuity contracts and variable life insurance policies. Scudder, Stevens & Clark, Inc. is the investment adviser to the six Portfolios currently available under the Contracts.

10. The Scudder Public Funds are or will be open-end management investment companies registered under the Act. Shares of the Scudder Public Funds will be purchased and redeemed without sales or transaction charges at their net asset value. Sales charges also will not be imposed on reinvested dividends. In addition, none of such funds will have adopted distribution plans pursuant to rule 12b–1 under the Act which would be applicable to shares involved in the arrangements which are the subject of the application. Therefore no distribution expenses will be deducted from the assets of any of such shares. Certain expenses will be deducted from the assets of the Scudder Public Funds as annual fund operating expenses. These include management fees (to compensate such fund's investment advisers) and other

expenses (including custodial and transfer agent fees, audit, legal and other ordinary business operating expenses).

11. Scudder and other broker-dealer/agents may solicit indications of interest in the Contracts and will forward the appropriate prospectus and application form to interested persons. A Scudder Public Fund shareholder would request the redemption of Scudder Public Fund shares and would direct the application of the proceeds to fund a Contract payment through completion of the necessary application form and an exchange authorization at the bottom thereof. This form would be immediately transmitted to Scudder for its confirmation. The redemption of the indicated Scudder Public Fund shares would occur at the net asset value determined on the date of receipt of the authorization by Scudder. The proceeds received upon redemption would be wired to Charter or First Charter after processing on the following day. Charter or First Charter would process the payment and credit the amount to the Contract at the price next determined after receipt of payment on that day in the same manner as amounts received directly from an investor.

12. The availability of this exchange procedure will be set forth in the prospectus for the Charter and First Charter Contracts. There would be no requirement, however, at the time of the sale of a Contract or thereafter, that payments be made by redeeming Scudder Public Fund shares, and offers of Contracts would not be limited to Scudder Public Fund shareholders, nor would there be any requirement that Scudder Public Fund customers purchase a Contract. The choice of whether to purchase a Contract, and whether to make payments with proceeds from Scudder Public Funds redemptions, would be solely the investor's.

13. Applicants note that rule 11a–2 permits offers of exchange between insurance company separate accounts having the same or an affiliated insurance company depositor or sponsor and rule 11a–3 permits certain exchange offers between mutual funds in the same group of investment companies. Neither rule would apply to the procedures described in the application because these are arrangements between a mutual fund and a separate account classified as a unit investment trust.

14. Applicants assert that the purchase procedures described in the application offer to Contract purchasers the flexibility to effect purchases expeditiously with funds from any source chosen by the purchaser, including proceeds from Scudder Public Fund share redemptions. The provision for potential redemption of Scudder Public Fund share holdings is intended as an administrative convenience which allows investors who may be Scudder Public Fund shareholders to implement their investment decisions in accordance with their preferred methods.

15. Applicants assert that the streamlined transfer of funds procedure does not add any cost to the transaction. It permits a Scudder Public Fund shareholder to avoid the loss of investment return which would otherwise occur because of the delay inherent in the processing of a redemption order, receipt of the proceeds by the shareholder, and receipt by Charter or First Charter of the proceeds for investment in a Contract.

16. If the Applicants were deemed to be making an offer of exchange of Scudder Public Fund shares for the shares of the Fund underlying the Contracts, such offer would be made in compliance with section 11(a) and the relevant terms of rule 11a–3 thereunder, so that no individual exemptive relief would be required. The exchange would be made on the basis of relative net asset values of the respective securities—no initial sales load was paid upon purchase and no redemption fee or contingent deferred sales load would be applicable upon redemption of the Scudder Public Fund shares, and no sales load, either up-front or deferred, would be deducted from the amount applied to the account value of the purchased Contract.

17. If the Applicants were deemed to be making an offer of exchange of Scudder Public Fund shares for the Contracts themselves, approval of the Commission would be required under section 11(c) merely because the Contracts are funded through unit investment trust separate accounts. However, no initial sales load was paid upon purchase and no redemption fee or contingent deferred sales load would be applicable upon redemption of the Scudder Public Fund shares, and no sales load, either up-front or deferred, would be deducted from the amount applied to the account value of the purchased Contract. For these reasons, and based on the circumstances set forth in the application, no investor protection or public interest issues arise.

18. Applicants state that from a policy perspective, the dangers to which section 11 is directed are not present in connection with the arrangements described in the application. None of the Scudder Public Funds would realize redemption fees or contingent deferred sales charges in connection with the proposed transactions. No sales charges would be deducted under the Contracts and Charter or First Charter would not receive any other charges in excess of charges received when purchases are made with funds acquired otherwise than through the redemption of Scudder Public Fund shares. In addition, disclosure with respect to the Contracts (prospectus and sales materials) would include information about the fees and expenses incurred by the underlying Fund and compensation for promotion, distribution and administrative services paid by Charter and First Charter.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–8649 Filed 4–11–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended March 22, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47469.

Date filed: March 19, 1991.

Parties: Members of the International Air Transport Association.

Subject: Telex dated March 11, 1991. R–1 to R–4. Mail Vote 474 (Fares between Indonesia and PRC).

Proposed Effective Date: April 1, 1991.

Phyllis T. Kaylor.

Chief, Documentary Services Division.

[FR Doc. 91–8684 Filed 4–11–91; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 22, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures.

Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47470.

Date filed: March 19, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 16, 1991.

Description: Application of Cayman Airways Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, requests amendment of its foreign air carrier permit so as to redesignate the point "Miami" and "Miami/Ft. Lauderdale."

Docket Number: 47474.

Date filed: March 21, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 18, 1991.

Description: Application of Japan Air System Company, Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations applies for a foreign air carrier permit to engage in foreign air transportation between Tokyo, Japan and Honolulu, Hawaii.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-8685 Filed 4-11-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 8, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0023.

Form Number: IRS Form 720.

Type of Review: Revision.

Title: Quarterly Federal Excise Tax Return.

Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and vaccines, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (Internal Revenue Code Section 6011).

Respondents: Individuals or households, Business or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 608,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 720	Schedule A
Record-keeping.	13 hrs., 30 min..	2 hrs., 9 min.
Learning about the law or the form.	1 hr., 28 min.....	
Preparing the form.	5 hrs., 29 min...	3 min.
Sending the form to IRS.	1 hr., 4 min.....	

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 14,017,620 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-8609 Filed 4-11-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

April 5, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0004.

Form Number: CF 7505 and 7505-A.

Type of Review: Extension.

Title: Warehouse Withdrawal for Consumption.

Description: This document is necessary to provide an accounting method for recording each separate withdrawal, and to satisfy the cashier/liquidator/public receipt and documentary requirements.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,850.

Estimated Burden Hours Per Response/Recordkeeping: 5 hours, 35 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/Reporting Burden: 81,018 hours.

Clearance Officer: Ralph Meyer (202) 343-0044, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-8610 Filed 4-11-91; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

April 4, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535-0089.

Form Number: None.

Type of Review: Extension.

Title: Implementing Regulations: Government Securities Act of 1986.

Description: The regulations require government securities brokers and dealers to make and keep records concerning their business activities and their holdings of securities, to submit financial reports, and to make certain disclosures to investors. The regulations require depository institutions to keep records concerning non-fiduciary holdings of government securities. The goal is investor protection.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 800.

Estimated Burden Hours Per Response/Recordkeeping: 206 hrs., 17 mins.

Frequency of Response: Monthly, Quarterly, Annually, One-time filing.

Estimated Total Reporting Burden: 432,170 hours.

Clearance Officer: Rita DeNagy (202) 447–1640, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–8611 Filed 4–11–91; 8:45 am]

BILLING CODE 4810–40–M

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief, Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of granting of restoration of Federal firearms privileges.

SUMMARY: The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms.

As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge J. Lynn Cheatwood, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202–566–7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms. These privileges were lost by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year or because they otherwise fell within a category of persons prohibited by Federal law from acquiring, transferring, receiving, shipping or possessing firearms.

It has been established to the Director's satisfaction that the circumstances regarding the applicants' disabilities and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

Abbott, Harold James, Lorraine Street, Pierrepont Manor, New York, convicted on June 23, 1965, in the Jefferson County Superior Court, Ellisburg, New York.

Baker, Jimmy Ray, Post Office Box 318, Ermine, Kentucky, convicted on April 8, 1971, in the Letcher Circuit Court, Whitesburg, Kentucky.

Ball, Brian Keith, Box 121, County Trunk M, Waupun, Wisconsin, convicted on February 1, 1985, in the Fond du Lac County Circuit Court, Fond du Lac, Wisconsin.

Belcher, James Joseph, 22044 Powers, Dearborn Heights, Michigan, convicted on June 24, 1965, and on January 27, 1971, in the Oakland County Circuit Court, Michigan.

Bennett, Hobson Curfew Junior, 108 Sandybrook Road, Wilmington, North Carolina, convicted on April 5, 1978, in the United States District Court, Wilmington, North Carolina.

Black, Marvin Lorenzo, 8122 South Evans Avenue, Chicago, Illinois, convicted on March 13, 1957, in a General Court Martial, R.A.F., Lakeheath, Suffolk, England.

Bowe, Donavon Ernest, 1029 Gerald Street, Chippewa Falls, Wisconsin, convicted January 25, 1983, in the Circuit Court, Branch II, Chippewa County, Wisconsin.

Brann, Barry Donald, RFD Box 221, Fort Kent, Maine, convicted on January 7, 1983, in the Aroostock County Court, Aroostock County, Maine.

Brebner, Richard, 124 Maple Lane, Aspen, Colorado, convicted on March 17, 1976, in the United States District Court, Southern District of Mississippi.

Brisbois, James Alfred Senior, 12560 Frost, Hemlock, Michigan, convicted on May 18, 1982, in the United States District Court, Eastern Judicial District of Michigan.

Bruzzese, Vincent Joseph, 710 Mountain Street, Philadelphia, Pennsylvania, convicted on January 25, 1957, in the United States District Court, Camden, New Jersey.

Bryant, Damon Eugene, 4884 Salem Church Road, Union City, Tennessee, convicted on January 12, 1971, in the Obion County District Court, Union City, Tennessee.

Cashell, Charles Richard, SL52 Lake Cherokee, Henderson, Texas, convicted on January 3, 1980, in the United States District Court, Eastern District of Texas.

Cheetham, James Bryan, 9134 Southwest 43rd, Portland, Oregon, convicted on April 26, 1985, in the Umatilla Superior Court, Oregon.

Coleman, Henry Lee, 305 South 20th, Saginaw, Michigan, convicted on December 15, 1972, in the United States District Court, Bay City, Michigan.

Cowherd, Charles Alexander, 2011 North Centennial, Indianapolis, Indiana, convicted on November 26, 1975, in the Circuit Court of Marion County, Indiana.

Davis, Michael L., 810 Vermont Way, Brackenridge, Pennsylvania, convicted on November 11, 1984, in the Court of Common Pleas, Allegheny County, Pennsylvania.

Douglass, Stuart A., 2717 Millbrook Road, Birmingham, Alabama, convicted on January 18, 1978, in the United States District Court, Northern Judicial District of Alabama, Birmingham, Alabama.

Etheredge, Steven Lynn, Route 1, Box 277A, Warrior, Alabama, convicted on March 21, 1972, in the Jefferson County District Court of Alabama.

Ferrell, Eugene Ervin, General Delivery, Majestic, Kentucky, convicted on October 11, 1956, in the United States District Court, Eastern Judicial District of Kentucky.

Fletcher, David L., Route 3, Box 462, Brighton, Tennessee, convicted on November 30, 1984, in the United States District Court, Western District of Tennessee, Memphis, Tennessee.

Ford, Percy Silman, 1610 East Barclay Street, Baltimore, Maryland, convicted on April 24, 1984, in the District Court of Maryland, Baltimore, Maryland.

Fuhrman, Decil Robert, 10541 Oakland Drive, Portage, Michigan, convicted on May 8, 1967, in the Circuit Court of Kalamazoo, Michigan.

Funkhouser, Jaime Ann, Route 1, Box 177, Morgantown, Indiana, convicted on June 6, 1984, in the McClain County District Court, Purcell, Oklahoma.

Funkhouser, Kevin Eugene, Route 1, Box 177, Morgantown, Indiana, convicted on June 6, 1984, McClain County District Court, Purcell, Oklahoma.

Garvey, Joseph Harry, 3205 Hayes Road, Norristown, Pennsylvania, convicted on May 27, 1987, in the United States District Court, Eastern District of Pennsylvania.

Good, William Allen, 42 Chateau Palmer, Kenner, Louisiana, convicted on October 8, 1980, in the United States District Court, Eastern Judicial District of Louisiana, New Orleans, Louisiana.

Grangaard, Steven Ray, Rural Route 4, Roherty Road, Janesville, Wisconsin, convicted on June 6, 1985, in the Rock County Circuit Court, Branch I, Janesville, Wisconsin.

Grinnell, Lonnie Lee, N4484 Klondike Road, Monroe, Wisconsin, convicted on June 24, 1983, in the Circuit Court of Green County, Monroe, Wisconsin.

Haan, James Lester, 3600 East 80 Avenue, Apartment 207, Thornton, Colorado, convicted on July 14, 1983, in the Fen District Court, Denver, Colorado.

Homes, Brian Scott, West 1432 Knox, Apartment 1, Spokane, Washington,

convicted on April 17, 1986, in the Superior Court, Spokane County, Washington.

Hutchins, Danny, 7 Red Oak Drive, Phenix City, Alabama, convicted on December 11, 1967, in the Circuit Court of Polk County, Bartow, Florida.

Jones, Donald William, 64 Crimson King Lane, Levitown, Pennsylvania, convicted on March 20, 1969, in the Criminal Court of Burke County, Levitown, Pennsylvania.

Kaminski, Joseph Henry, West 65 North 14255 Washington Avenue, Apartment 121, Cedarburg, Wisconsin, convicted on December 3, 1979, in the Circuit Court of Washington County, West Bend, Wisconsin.

Kastory, Anton, 2030 Mickey Lane, Glenview, Illinois, convicted on November 1, 1977, in the United States District Court, Northern District of Illinois.

Koslop, Raymond B. Junior, 786 North Locust Street, Hazleton, Pennsylvania, convicted on January 10, 1979, in the Court of Common Pleas, Luzerne County, Wilkes-Barre, Pennsylvania.

Krajacic, Anthony James, 1290 Donnon Avenue, Apartment F-22, Washington, Pennsylvania, convicted on February 3, 1986, in the United States District Court, Western District of Pennsylvania.

Lane, Ricky Allen, Rural Route 2, Bos 2110, Center Road, Fairfield, Maine, convicted on March 31, 1981, in the Superior Court, Kennebec, Maine.

LaPointe, Daniel Raye, Post Office Box 1181, Cariboo, Maine, convicted on April 6, 1973, and on May 2, 1975, in the Aroostock County Court, Aroostock, Maine.

Lorretta, Jeffrey Frank, 410 Eltingville Avenue, Staten Island, New York, convicted on January 12, 1981, in the Superior Court, Middlesex County, New Jersey.

Martin, Harvey Burk, 713 20th Street West, Pell City, Alabama, convicted on May 14, 1980, and on July 21, 1980, in the Circuit Court of Talladega, Alabama.

Mayer, Ricky Eugene, 2335 9th Street, Eau Claire, Wisconsin, convicted on August 2, 1978, in the Eau Claire County Circuit Court, Branch I, Eau Claire, Wisconsin.

McDaniel, Robert Daley, Post Office Box 2412, Hot Springs, Arkansas, convicted on December 7, 1977, in the United States District Court, Western Judicial District of Arkansas, Hot Springs, Arkansas.

McGowan, James Robert, 7 Walberta, Rochester, Illinois, convicted on January 5, 1983, in the United States District Court, Central District of Illinois, Springfield, Illinois.

Osborne, Timothy Paul, 2221 Muldoon Road, Apartment 89, Anchorage, Alaska, convicted on December 4, 1979, in the Ramsey County District Court, St. Paul, Minnesota.

Owens, Ronnie Dale, 601 Cedar Cliff Road, Dreyfus, Kentucky, convicted on June 12, 1974, in the Madison County Circuit Court, Kentucky.

Paradis, Richard Joseph, 238 Main Street, Apartment 6, Lewiston, Maine, convicted on February 2, 1961, in the Androscoggin County Superior Court, Androscoggin, Maine.

Parks, Kenneth Elliot, 918 East Pine Street, Palmyra, Pennsylvania, convicted on August 1, 1986, in the United States District Court, Middle District of Pennsylvania.

Pearce, Michael Eugene, Route 2, Box 204A, Jacksonville, Texas, convicted on October 14, 1985, in the District Court of Panola County, Texas.

Phillips, Michael John, 1215 Green Street, Manitowoc, Wisconsin, convicted on March 19, 1969, Manitowoc County Circuit Court, Manitowoc, Wisconsin.

Pratt, Delbert Wendell, 205E Greenwood Street, Enterprise, Oregon, convicted on March 3, 1986, in the Wollowa County Circuit Court, Enterprise, Oregon.

Prillaman, Harvey Dean, Route 1, Box 81, Henry, Virginia, convicted on December 21, 1982, in the Circuit Court of Franklin County, Virginia.

Rhodes, Kent Phil, Post Office Box 81, North Wilksboro, North Carolina, convicted on April 8, 1980, in the Middle District of North Carolina.

Sartin, Marshall Lynn, 631 North Kessler Boulevard, Sherman, Texas, convicted on September 14, 1984, in the United States District Court, Eastern District of Texas, Sherman, Texas.

Schmidt, Richard Watson, 1150 Oakmont Avenue, Oakmont, Pennsylvania, convicted on January 29, 1954, and on April 18, 1957, in the Court of Quarter Sessions, Allegheny County, Pennsylvania.

Sell, Marion P. Junior, Route 3, Box 6, Knob Creek Road, Johnson City, Tennessee, convicted on December 8, 1982, in the Criminal Court for Washington County, Tennessee.

Sell, Michael Paul, 408 and One Half Carroll Creek Road, Apartment 19, Johnson City, Tennessee, convicted on December 8, 1982, in the Criminal Court for Washington, Jonesboro, Tennessee.

Sherman, Willie Walter, 3237 Carter Street, Saginaw, Michigan, convicted on October 31, 1956, in the Circuit Court of Saginaw County, Michigan.

Sorenson, Brett Logan, Post Office Box 395, Story, Wyoming, convicted on December 20, 1985, in the United States District Court for the State of Wyoming.

Strain, James Henderson Junior, 3782 Woodridge, Abilene, Texas, convicted on January 24, 1986, in the United States District Court, Western District of Texas.

Studee, David Joseph, 7885 North 80th Street, Milwaukee, Wisconsin, convicted on October 15, 1986, in the Circuit Court, Milwaukee County, Milwaukee, Wisconsin.

Sullivan, James Patrick, Route 1, Box 165-C, Magnolia, Mississippi, convicted on July 9, 1975, in the United States District Court, Eastern District of Louisiana.

Thiele, Lynn David, Route 2, Box 15, Norton, Kansas, convicted on May 17, 1985, in the Decatur County District Court, State of Kansas.

Thomas, Larry Wayne, 356 Gifford Road, Apartment 3, Bristol, Tennessee, convicted December 14, 1973, in the Criminal Court, Sullivan County, Tennessee.

Tootle, Roland Charles Junior, 202 Beverly Drive, Ocean Springs, Mississippi, convicted on May 12, 1969, in the Circuit Court of Harrison County, Gulfport, Mississippi.

Wagahoff, Robert Leo, Rural Route 2, Box 1, Raymond, Illinois, convicted on November 10, 1980, in the United States District Court, Central District of Illinois, Springfield, Illinois.

Wicks, James Henry, Route 3, Box 562, Henagar, Alabama, convicted on March 31, 1981, in the Circuit Court of Jackson County, Jackson, Alabama.

William, Randy Allan, Post Office Box 656, Yellow Creek Road, Lead, South Dakota, convicted on January 3, 1983, in the United States District Court, Rapid City, South Dakota.

York, James Vernon, Route 1, Violet Road, Crittenden, Kentucky, convicted on March 2, 1970, in the State of Kentucky.

Compliance With Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Dated: March 13, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-8601 Filed 4-11-91; 8:45 am]

BILLING CODE 4810-31-M

Customs Service

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of calculation and interest.

SUMMARY: This notice advises the public of the interest rates for overpayments and underpayments of Customs duties. The rates are 9 percent for overpayments and 10 percent for underpayments for the quarter beginning April 1, 1991. This notice is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, (317) 298-1245.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on

applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

The rates of interest for the period of April 1, 1991–June 30, 1991, are 9 percent for overpayments and 10 percent for underpayments. These rates will remain in effect through June 30, 1991, and are subject to change on July 1, 1991.

Dated: April 5, 1991.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 91–8612 Filed 4–11–91; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

[Delegation Order No. 42, Rev. 24]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This delegation order clarifies and extends the authority to execute consent agreements for fixing the period of limitations involving partnerships and S corporations items that have converted to nonpartnership items or nonsubchapter S items due to one or more of the events as described in section 6231(b)(1)(A) through (D) as referred to in section 6229 (f). The text of the delegation order appears below.

EFFECTIVE DATE: February 8, 1991.

FOR FURTHER INFORMATION CONTACT: Theodore J. Cichaski, CC:AP:TS, room 320, 901 D Street SW., Washington, DC, 20024–2518, telephone (202) 401–4165 (not a toll-free telephone number).

Authority To Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939, 1954, and 1986 Internal Revenue Codes

1. Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Order 150–10; 26 U.S.C. 6229(e); 26 CFR 301.6501(c)–1;26 CFR 301.6502–1; 26 CFR 301.6901–1(d); and 26 CFR 301.7701–9; the authority to sign all consents fixing the period of limitations on assessment or collection is delegated to the following officials:

a. Associate Chief Counsels (Technical) and (International);

b. Assistant Commissioner (International);

c. Assistant Commissioner (Employee Plans and Exempt Organizations) but limited to form 872–C, consent fixing period of limitation upon the assessment of tax under section 4940 of the Internal Revenue Code;

d. Regional Counsel;

e. Regional Director of Appeals;

f. Service Center Directors;

g. Director, Austin Compliance Center; and

h. District Director.

2. This authority may be redelegated but not below the following levels for each activity:

a. Service Centers-Chief, Accounting Branch; Chief, Quality Assurance; Chief, Adjustment/Correspondence; Revenue Quality Assurance; Chief, Adjustment/Correspondence; Revenue Officers and Collection Branch managers Grade GS–9 or higher; Chief, Classification function; and personnel assigned to the Examination Support Unit, Grade GS–11 or higher;

b. Austin compliance Center—Underreporter Division—Branch Chiefs; Collection Division-all Branch Chiefs and Chief, Quality Analysis Staff; Examination Division-Chiefs, Examination Branches, Chief, Quality Assurance Staff, Chief, Classification Branch; and personnel assigned to the Windfall Profits Staff, GS–11;

c. Collection-Revenue Officers; Collection Support function managers Grade GS–9 or higher;

d. Examination-Reviewers, Grade GS–11 or higher; Group managers (including large case managers); Chiefs, Planning and Special Programs and personnel assigned thereto Grade GS–11 or higher; Returns Classification Specialists and Returns Classification Officers, Grade GS–11;

e. Criminal Investigation-Chiefs, Criminal Investigation Divisions, except in those districts where the Criminal Investigation Group managers report directly to the District Directors, the authority is limited to the District Director;

f. Appeals-Appeals Officers;

g. Assistant Commissioner (International)—Representatives at foreign posts; Revenue Agents, Tax Auditors, and Special Agents on foreign assignments; and levels indicated in c, d, and e above;

h. Technical Division Group Managers and Conferee/Reviewers; and

i. District Employee Plans and Exempt Organizations—Reviewers, Grade GS–11 or higher; and Group Managers.

3. No authority is delegated under this order to the District Counsel.

4. Delegation Order No. 42 (Rev. 23), effective September 17, 1990, is superseded.

Dated: February 8, 1991.

David G. Blattner,

Chief Operations Officer.

[FR Doc. 91–8592 Filed 4–11–91; 8:45 am]

BILLING CODE 4830–01–M

[Delegation Order No. 209, Rev. 5]

Delegation of Authority

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: This delegation order extends the authority to execute consent agreements to extend the period of limitations involving any partnership or S corporation items that have converted to nonpartnership items or nonsubscriber S items due to one or more events as described in section 6231(b)(1) (A) through (D) as referred to in section 6229(f). The text of the delegation order appears below.

EFFECTIVE DATE: February 8, 1991.

FOR FURTHER INFORMATION CONTACT: Theodore J. Cichaski, CC:AP:TS, room 230, 901 D Street SW., Washington, DC 20024–2518, telephone (202) 401–4179 (not a toll-free telephone number).

Delegation of Authority in Partnership and S Corporation Matters

Pursuant to the authority vested in the Commissioner of Internal Revenue by IRC 6223, 6224, 6228, 6229, 6231(a)(7), 6232, 6243, and 6244, and Treasury Order 150–10:

1. Authority to sign the notice to partners or shareholders at the beginning of an administrative proceeding at the partnership or S corporation level with respect to a partnership or subchapter S item is delegated to revenue agents (grade GS–11 and higher).

2. Authority to sign the notice of final partnership or S corporation

administrative adjustment is delegated to:

a. Chiefs and associate chiefs of appeals offices;

b. Appeals team chiefs as to their respective cases;

c. Appeals officers in service centers and the Austin Compliance Center;

d. Revenue agents (reviewers) (grade GS–11 and higher) in Examination Division or in Office of Taxpayer Service and Compliance, Assistant Commissioner (International); and

e. Revenue agents (grade GS–11 and higher) in service centers and the Austin Compliance Center.

3. Authority to enter into and approve a written settlement agreement with one or more partners or shareholders with respect to the determination of partnership or subchapter S items and any items affected by such items for such partnership or S corporation taxable year is delegated to:

a. Chiefs and associate chiefs of appeals offices;

b. Appeals team chiefs as to their respective cases;

c. Appeals officers in service centers and the Austin Compliance Center but not as to their respective cases;

d. Revenue agents (reviewers) (grade GS–11 and higher) in Examination Division or Office of Taxpayer Service and Compliance, Assistant Commissioner (International); and

e. Revenue agents (grade GS–11 and higher) in service centers and the Austin Compliance Center.

4. Authority to designate a Tax Matters Partner with respect to a partnership or a Tax Matters Person for an S Corporation, is delegated to:

a. Chiefs and associate chiefs of appeals offices;

b. Appeals team chiefs, as to their respective cases; and

c. Group managers in Examination Division.

5. Authority to sign consents fixing the period of limitations on assessment and collection of any tax under subtitle A attributable to any partnership item or subchapter S item (or affected item, or any items that have become nonpartnership items or nonsubchapter S items, or any item affected by such items), or to extend the period for filing a civil action for adjustment of partnership or subchapter S items pursuant to IRC 6228, is delegated to:

a. Appeals officers;

b. Appeals team chiefs, as to their respective cases; and

c. The Examination Division as indicated in Delegation Order No. 42, as revised.

6. To the extent the authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

7. The authority delegated herein may not be redelegated.

8. Delegation Order No. 209 (Rev. 4), effective September 17, 1990, is hereby superseded.

Dated: February 8, 1991.

Approved:

David G. Blattner,

Chief Operations Officer.

[FR Doc. 91–8591 Filed 4–11–91; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by Act of October 19, 1965 (79 stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Pacific Parallels: Artists and the Landscape in New Zealand" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Dixon Gallery and Gardens, Memphis, Tennessee, beginning on or about May 4, 1991, to on or about June 30, 1991, the Cedar Rapids Museum of Art, Cedar Rapids, Iowa, beginning on or about August 8, 1991, to on or about October 13, 1991, the Spencer Museum of Art, Lawrence, Kansas, beginning on or about November 3, 1991, to on or about December 29, 1991, Meridian House International, Washington, DC, beginning on or about February 2, 1992, to on or about March 29, 1992, the San Diego Museum of Art, San Diego, California, beginning on or about April 26, 1992, to on or about June 21, 1992, and the Honolulu Academy of Arts, Honolulu, Hawaii, beginning on or about January 10, 1993, to on or about March 7, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: April 8, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91–8635 Filed 4–11–91; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 56, No. 71
Friday, April 12, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:00 p.m., Tuesday, April 16, 1991.

LOCATION: Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: All Terrain Vehicles.

The staff will brief the Commission on options and recommendations related to All Terrain Vehicles (ATVs).

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: April 10, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–8806 Filed 4–10–91; 2:29 p.m.]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Thursday, April 18, 1991.

LOCATION: Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Section 15 and Section 37 Interpretive Rules.

The staff will brief the Commission on a Federal Register document proposing amendments to the Commission's rules interpreting Section 15 of the CPSA and a Federal Register document proposing a rule interpreting Section 37 of the CPSA.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: April 10, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–8807 Filed 4–10–91; 2:29 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:45 p.m. on Tuesday, April 9, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Matters relating to the Corporation's corporate activities.

Matters relating to certain financial institutions.

Matters relating to the Corporation's assistance agreements with insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: April 10, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–8792 Filed 4–10–91; 1:14 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, April 16, 1991, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Supplemental Budget Authority and Budget Adjustment Procedures.

Memorandum and resolution re: Technical amendment to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," to delete a provision inadvertently added during the Corporation's most recent revisions to Part 303.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 338 of the Corporation's rules and regulations, entitled "Fair Housing," which would revise the Home Loan Application Log-sheet currently prescribed by its fair housing regulations in order to conform it to the Loan/Application Register prescribed by Regulation C of the Board of Governors of the Federal Reserve System.

Memorandum and resolution re: Petition to Amend Part 323 of the Corporation's rules and regulations, entitled "Appraisals."

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 9, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–8748 Filed 4–10–91; 10:42 am]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, April 16, 1991, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Office of Inspector General:

Audit Report re:
Franklin Federal Bancorp, Federal Savings Bank, Dallas, Texas, Assistance Agreement, Case Number SWP-016c, (Memo dated March 15, 1991)

Audit Report re:
Addison Consolidated Office, Cost Center—404 (Memo dated March 1, 1991)

Audit Report re:
Inventory Closing Procedures, Bossier City Consolidated Office (Memo dated March 6, 1991)

Audit Report re:
Charles Schreiner Bank, Kerrville, Texas (4186) (Memo dated February 22, 1991)

Audit Report re:
Audit Report on the Congressional Inquiry Process—Office of Legislative Affairs (Memo dated February 15, 1991)

Audit Report re:
Audit of Procurement and Management of Appraisals—Division Level Issues (Memo dated March 11, 1991)

Audit Report re:
Audit of Legal System Development Project, Project Definition—Phase I (Memo dated March 14, 1991)

Audit Report re:
Audit of Accounts Payable and Purchase Order Subsystems (Memo dated March 11, 1991)

Audit Report re:
Audit of Legal Expenses Paid to the Law Firm of Arter & Hadden (Memo dated February 15, 1991)

Audit Report re:
Audit of Legal Expenses Paid to the Law Firm of Squires, Sanders and Dempsey (Memo dated March 11, 1991)

Audit Report re:
Audit of the Corporation's Incentive Awards Program (Memo dated March 15, 1991)

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act' (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 9, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–8749 Filed 4–10–91; 10:42 am]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD:

TIME AND DATE: 10:00 a.m., Tuesday, April 16, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board will consider the following:

(1) Housing Finance Directorate Policy Report;

(2) Federal Home Loan Bank of San Francisco Presidency;

(3) Federal Home Loan Bank Presidents Compensation Study;

(4) Legislative Planning Report;

(5) Office of Thrift Supervision Rulemaking; and

(6) Board Management Issues.

The above matters are exempt under one or more of sections 552b(c)(2), (6), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. § 552b(c)(2), (6), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–8736 Filed 4–9–91; 4:46 pm]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., April 17, 1991.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Laws, Rules, Regulations and Practices of the Republic of Korea Affecting Shipping in the U.S./Korea Trade.

2. Docket No. 89–07—*Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade*—Request for Enforcement of Final Rule.

3. Docket No. 89–27—*Martyn Merritt, AMG Services, Inc. d/b/a Ariel Maritime Group and Ariel Maritime, Oasis Express Line, Javelin Line, Trans Africa Line, Coast Container Line, Buccaneer Line, and Union Exportadora Lines—Possible Violations of Section 10(a)(1) and 10(b)(1) of the Shipping Act of 1984*—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91–8805 Filed 4–10–91; 2:28 pm]

BILLING CODE 6730–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, April 17, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded

announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 9, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-8742 Filed 4-10-91; 9:53 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of April 8, 1991.

A closed meeting will be held on Tuesday, April 9, 1991, at 2:30 p.m. An open meeting will be held on Thursday, April 11, 1991, at 9:30 a.m., in Room 1C30. Previously announced on March 26, 1991 and April 1, 1991, see 56 FR 12975 March 28, 1991 and 56 FR 13708 April 3, 1991.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Lochner, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 9, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Settlement of administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Edward Pittman at (202) 272-2100.

Dated: April 8, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 8753 Filed 4-10-91; 10:59 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 56, No. 71
Friday, April 12, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

The Sumitomo Trust & Banking Co., Ltd.; Application To Engage de novo in Permissible Nonbanking Activities

Correction

In notice document 91-6969 appearing on page 12374 in the issue of Monday, March 25, 1991, in the first column, in the third paragraph, in the last line, "March 19," should read "April 15,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Morantel Tartrate Sustained-Release Trilaminate Cylinder/Sheet

Correction

In rule document 91-7731 beginning on page 13395 in the issue of Tuesday, April 2, 1991, in the authority citation, on page 13396, in the first column, "[21 U.S.C. 360]" should read "[21 U.S.C. 360b]".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatability Program and Request for Review; Will Rogers World Airport, Oklahoma City, OK

Correction

In notice document 91-8000 beginning on page 14144 in the issue of Friday, April 5, 1991, in the second column, under **EFFECTIVE DATE**, in the sixth line, "March" should read "May".

BILLING CODE 1505-01-D

federal register

Friday
April 12, 1991

Part II

Department of Education

34 CFR Part 215

Follow Through Program; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 215

RIN 1810-AA25

Follow Through Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Follow Through Program. These final regulations incorporate amendments to the Follow Through Act (the Act) enacted by the Augustus F. Hawkins Human Services Reauthorization Act of 1990. The amended regulations eliminate self-sponsored local projects as eligible grantees and remove the requirement that a local Follow Through project be restricted to only one school.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. James R. Ogura, Chief, Program Policy Branch, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2043, Washington, DC 20202-6132. Telephone: (202) 401-0701. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On November 3, 1990, the President signed into law the Augustus F. Hawkins Human Services Reauthorization Act of 1990, Public Law 101-501, which included amendments to the Follow Through Act. The final regulations in this document make the following technical amendments to the Follow Through regulations (34 CFR part 215) to incorporate statutory changes enacted by Public Law 101-501. In addition, other technical revisions are made to §§ 215.7 and 215.40.

Section 215.2 What Type of Grants Does the Secretary Award?

Subsection (a) is revised to delete self-sponsored local projects as a type of Follow Through grant the Secretary awards. Section 663(b) of the Act requires that a local project implement a model Follow Through approach and that the local project have a formal arrangement with the sponsor of the model approach to receive technical assistance and training relative to the approach.

Section 215.4 What Does a Local Follow Through Project Do?

Subsection (a)(5) is deleted because it refers to a dissemination component for self-sponsored local projects. In addition, subsection (b), which required that a local project be conducted in only one school, is deleted. Section 662(d) of the Act precludes this restriction.

Section 215.6 What Children May Participate in a Local Follow Through Project?

A new paragraph (d), is added to § 215.6 to implement section 662(f) of the Act, which provides that a local educational agency (LEA) that carries out a Follow Through project in a school designated as a schoolwide project under section 1015(a) of the Elementary and Secondary Education Act of 1965 may serve all children attending the school in kindergarten through grade 3.

Section 215.7 What Regulations Apply?

Section 215.7 is modified to delete part 78 of the Education Department General Administrative Regulations (EDGAR), which no longer applies, and to include new parts that currently apply to the Follow Through Program: part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses). Part 78 is being deleted because it contains rules for the conduct of proceedings before the Education Appeal Board, which are only applicable to final audit determinations received by grantees before October 25, 1988. Requlations to govern the enforcement of legal requirements since October 25 are in part 81 of EDGAR.

Section 215.10 How Does an Applicant Apply to Operate a Local Follow Through Project?

Section 215.10 is modified to eliminate references to self-sponsored local project applicants and to implement the application requirements in section 663 (b) of the Act.

Section 215.20 How Does the Secretary Evaluate an Application for a Follow Through Grant?

Section 215.20 is modified to eliminate references to self-sponsored local projects.

Section 215.21 What Selection Criteria Does the Secretary Use For Self-Sponsored Local Follow Through Project Applications?

The entire section is deleted because it includes criteria used to select self-sponsored local projects.

Section 215.24 What Other Factors Does the Secretary Consider in Awarding a Follow Through Grant?

This section has been revised to delete references to self-sponsored local project applicants.

Section 215.31 What Program Requirements Must a Sponsor Meet?

A new paragraph (c) is added to § 215.31 to implement section 664A(b) of the Act, which limits the period of time to sponsor may provide technical assistance with respect to a particular model Follow Through approach for a local project.

Section 215.32 What Fiscal Requirements Must a Local Project Grantee Meet?

Section 215.32(b) has been modified to implement section 667(c)(4) of the Act, which provides that a local project grantee may use Follow Through funds to pay 100 percent of the approved costs of a project operated in a school designated as a school-wide project under section 1015(a) of the Elementary and Secondary Education Act of 1965.

Section 215.34 What Evaluation Requirements Apply to a Grantee?

New paragraphs (3) and (4) are added to §215.34(a) to implement the evaluation requirements in section 666(a) of the Act, which require that (1) evaluations measure the impact of projects on participating parents, entire schools, and school districts, and (2) local grantees that receive a grant for use in a school designated as a chapter 1 schoolwide projet compare results to determine whether the comprehensive services provided by the Follow Through project had a positive effect on those children's educational progress and development.

Section 215.40 What Procedures Does the Secretary Use Before Terminating a Grant?

Subpart E, which only contains § 215.40, is deleted, because § 215.7 now

references the regulations that apply to any termination proceeding.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations merely incorporate statutory changes and make other technical revisions, however, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations merely incorporate statutory changes and other technical revisions and would not impose excessive burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster intergovernmental partnership and a strengthened federalism by relaying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority or the United States.

List of Subjects in 34 CFR Part 215

Educaiton, Education of disadvantaged, Education—research, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance No. 84.014, Follow Through Program)

Dated: April 4, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34, part 215, of the Code of Federal Regulations as follows:

PART 215—FOLLOW THROUGH PROGRAM

1. The authority for part 215 is revised to read as follows:

Authority: 42 U.S.C. 9861–9869.

§ 215.1 [Amended]

2. The authority for § 215.1 is revised to read as follows:

(Authority: 42 U.S.C. 9861, 9863, 9863a, 9863b)

3. Section 215.2 is revised to read as follows:

§ 215.2 What type of grants does the Secretary award?

The Secretary awards three types of Follow Through grants:

(a) Local project grants.

(b) Sponsor grants.

(c) Research grants.

(Authority: 42 U.S.C. 9861, 9863, 9863a)

4. Section 215.3 is amended by adding a new paragraph (c) and revising the authority to read as follows:

§ 215.3 Who is eligible for an award?

* * * * *

(c) *Research grants.* The Secretary may award Follow Through research grants to public and nonprofit agencies, institutions, or organizations.

(Authority: 42 U.S.C. 9861, 9863, 9863a, 9863b)

§ 215.4 [Amended]

5. Section 215.4 is amended by removing paragraphs (a)(5) and (b), redesignating paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) as (a), (b), (c) and (d), respectively, and redesignating (a)(1) (i) and (ii) as (a) (1) and (2), respectively, and redesignating (a)(2) (i), (a)(2)(i) (A) through (J), and (a)(2)(ii) as (b)(1), (b)(1) (i) through (x), and (b)(2), respectively, removing the designation for paragraph (a) and revising the authority to read as follows:

(Authority: 42 U.S.C. 9861, 9862)

§ 215.5 [Amended]

6. The authority for § 215.5 is revised to read as follows:

(Authority: 42 U.S.C. 9863, 9863a)

7. Section 215.6 is amended by adding a new paragraph (d) and revising the authority to read as follows:

§ 215.6 What children may participate in a local Follow Through project?

* * * * *

(d) Notwithstanding paragraph (b) of this section, an LEA that carries out a Follow Through project in a school designated as a schoolwide project under section 1015(a) of the Elementary and Secondary Education Act of 1965 may serve all children attending the school in kindergarten through grade 3.

(Authority: 42 U.S.C. 9861 (a), (c), (f))

8. Section 215.7 is amended by revising paragraph (a) and the authority to read as follows:

§ 215.7 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations); Part 75 (Direct Grant Programs); Part 77 (Definitions that Apply To Department Regulations); part 79 (Intergovernmental Review of Department of Education Programs and Activities); Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); Part 81 (General Education Provisions Act—Enforcement); Part 82 (New Restrictions on Lobbying); Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and Part 86 (Drug-Free Schools and Campuses).

* * * * *

(Authority: 42 U.S.C. 9861–9869)

9. The authority for § 215.8 is revised to read as follows:

(Authority: 42 U.S.C. 9861–9869)

10. Section 215.10 is revised to read as follows:

§ 215.10 How does an applicant apply to operate a local Follow Through project?

(a) A local project applicant shall submit a joint application with a

sponsor whose approach the applicant will implement.

(b) No more than five local project applicants may apply with any sponsor.

(c) An applicant for a local project must—

(1) Provide that the program for which assistance is requested will be administered by or under the supervision of the applicant;

(2) Contain an assurance that the applicant will prepare and submit to the Secretary regular evaluations of and reports concerning the program;

(3) Estimate the number of children who are eligible for Follow Through services in the geographical area served by the program and the appropriate number to be served by the program;

(4) Describe which model Follow Through approach the applicant intends to use and the manner in which the applicant will implement the approach;

(5) Provide evidence that the applicant has made a formal arrangement to receive technical assistance and training relative to the approach from an appropriate agency, institution, or organization that receives funds under section 664A of the Follow Through Act;

(6) Provide an assurance that the instructional program, including textbooks and other material provided by the applicant, is appropriate to the ages and development needs of the children to be served by the program and to the model Follow Through approach selected;

(7) Specify the manner in which the applicant will provide comprehensive services, including through agreements with public or private entities to provide, make referrals to, or coordinate the provision of the services to children and their families through the program established under the Head Start Transition Project Act, or another comprehensive program;

(8) Provide for direct participation of parents, as provided in section 662(c) of the Follow Through Act, and include a certification that the application has been approved by a committee that represents parents of children who participate, and parents of children who are likely to participate, in the program;

(9) Describe how the applicant proposes to coordinate Follow Through services with services under chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, the Bilingual Education Act, and the Individuals with Disabilities Education Act (formerly Education of the Handicapped Act);

(10) Demonstrate that the—

(i) Applicant has entered into a formal arrangement with local Head Start programs and other preschool programs for the cooperation and activities that are necessary to ensure an effective transition of eligible children entering the Follow Through program carried out by the applicant; and

(ii) Follow Through activities to be provided by the applicant have been specifically designed to coordinate with, and build on, those activities provided to participants in local Head Start or other similar preschool programs;

(11) Describe the expected or, if possible, actual impact of the program on the applicant's regular school program; and

(12) Contain—

(i) A certification that the applicant submitted the application to the State educational agency for a reasonable period for comment before submitting the application to the Secretary; and

(ii) Any comments received from the State educational agency during the period.

(Authority: 42 U.S.C. 9861(a), (c), 9862)

§ 215.11 [Amended]

11. The authority for § 215.11 is revised to read as follows:

(Authority: 42 U.S.C. 9861(c), 9862, 9863, 9863a)

§ 215.20 [Amended]

12. Section 215.20 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), removing the word "sponsored" in redesignated paragraph (b)(1), and revising the authority to read as follows:

(Authority: 42 U.S.C. 9861(a), (c), 9863, 9863a)

§ 215.21 [Removed]

13. Section 215.21 is removed.

§ 215.22 [Amended]

14. The authority for § 215.22 is revised to read as follows:

(Authority: 42 U.S.C. 9861(a), (c), 9862, 9865(a), (b))

§ 215.23 [Amended]

15. The authority for § 215.23 is revised to read as follows:

(Authority: 42 U.S.C. 9863, 9863a, 9865(a), (b))

16. Section 215.24 is amended by removing paragraphs (a) and (b), redesignating paragraphs (c) and (d) as paragraphs (a) and (b), respectively, removing "—both self-sponsored and sponsored—" in redesignated paragraph (a), and revising the authority to read as follows:

(Authority: 42 U.S.C. 9861, 9862, 9863, 9863a)

§ 215.24 [Amended]

17. Section 215.31 is amended by adding a new paragraph (c) and revising the authority to read as follows:

§ 215.31 What program requirements must a sponsor meet?

* * * * *

(c) *Limitations on technical assistance.* (1) Technical assistance with respect to a particular model Follow Through approach may not be provided to a particular local project for more than five years.

(2) Notwithstanding paragraph (c)(1) of this section, if a recipient has received technical assistance prior to November 3, 1990, the Secretary may limit the provision of technical assistance to that recipient to three years with respect to a particular model Follow Through approach.

(Authority: 42 U.S.C. 9863, 9863a)

18. Section 215.32 is amended by adding "or (3)" following "(b)(2)" in paragraph (b)(1), adding a new paragraph (b)(3), and revising the authority to read as follows:

§ 215.32 What fiscal requirements must a local project grantee meet?

* * * * *

(b) * * *

(3) A local project grantee may use Follow Through funds to pay 100 percent of the approved costs of a project operated in a school designated as a schoolwide project under section 1015(a) of the Elementary and Secondary Education Act of 1965.

(Authority: 42 U.S.C. 9866(c), (d))

19. Section 215.34 is amended by adding new paragraphs (a) (3) and (4), and revising the authority to read as follows:

§ 215.34 What evaluation requirements apply to a grantee?

(a) * * *

(3) A grantee's evaluation must measure the impact of the project on—

(i) Participating parents;

(ii) Entire schools; and

(iii) The school district.

(4) A local grantee that receives a grant for use in a school designated as a schoolwide project under section 1015(a) of chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 shall also meet the following evaluation requirements:

(i) The evaluation must compare children who only receive services under chapter 1 with children who receive services under chapter 1 and Follow Through to determine whether the comprehensive services provided by the Follow Through project had a positive effect on children's educational progress and overall development.

(ii) To the extent practicable, the comparison required under paragraph (a)(4)(i) of this section must—

(A) Be made on the basis of results of evaluations conducted under chapter 1 and evaluations conducted under paragraph (a) of this section; and

(B) Take into account the amount of funds provided to the project.

* * * * *

(Authority: 42 U.S.C. 9862(b), 9865(a), (b))

§§ 215.40–215.49 (Subpart E)—[Removed]

20. Subpart E, including §§ 215.40–215.49, is removed.

[FR Doc. 91–8632 Filed 4–11–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.014]

Follow Through Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To serve the needs of children primarily from low-income families in kindergarten through grade 3 who have had Head Start or similar quality preschool experiences by providing grants to—

(1) Local educational agencies (LEAs) to operate local projects;

(2) Public and private nonprofit agencies, institutions, and organizations to serve as sponsors and provide technical assistance and training on model Follow Through approaches to local projects; and

(3) Public and private nonprofit agencies, institutions, and organizations to conduct research to develop model Follow Through approaches to meet the special needs of children who are eligible to participate in Follow Through programs.

Eligible Applicants: The following are eligible for new awards under this competition: LEAs and public and private nonprofit agencies, institutions, and organizations.

Deadline for Transmittal of Applications: June 17, 1991—84.014A Research Grants; May 15, 1991—84.014B Local Projects; May 15, 1991—84.014C Sponsors.

Deadline for Intergovernmental Review: August 16, 1991—84.014A Research Grants; July 14, 1991—84.014B Local Projects; July 14, 1991—84.014C Sponsors.

Available Funds: $7,265,000.

ESTIMATED NUMBER AND AVERAGE SIZE OF AWARDS

	Number	Average size	Amount
Local Project		$203,420	$5,085,500
Sponsors	10	167,950	1,679,500
Research	5	100,000	500,000
Totals	40		7,265,000

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), Part 86 (Drug-Free Schools and Campuses); and (b) The regulations for this program in 34 CFR Part 215 as amended in this issue of the **Federal Register.**

Description of Program:

(a) *Local Projects.* An LEA implements a model Follow Through approach developed by a sponsor that focuses primarily on children from low-income families in kindergarten and primary grades who were enrolled in Head Start or similar quality preschool programs. A Fellow Through sponsor submits a joint application with at least one but no more than five local projects that will implement the innovative approach developed by the sponsor. A project provides comprehensive educational, health, nutritional, social, and other services that aid in the continued development of the children. The project provides for the direct participation of parents in the development, conduct, and overall direction of the program at the local level.

In addition to meeting the requirements in § 215.4 and addressing the criteria in § 215.22, an application from an LEA for a grant to operate a local Follow Through project must—

(1) Provide that the program for which assistance is requested will be administered by or under the supervision of the applicant;

(2) Contain an assurance that the applicant will prepare, and submit to the Secretary, regular evaluations of and reports concerning the program;

(3) Estimate the number of children who are eligible for Follow Through services in the geographical area served by the program and the approximate number to be served by the program;

(4) Describe the model Follow Through approach the applicant intends to use, and the manner in which the applicant will implement the model;

(5) Provide evidence that the applicant has made a formal arrangement to receive technical assistance and training from the model's sponsor;

(6) Provide an assurance that the instructional program, including textbooks and other materials provided by the applicant, is appropriate for the ages and developmental needs of the children to be served and the Follow Through approach selected;

(7) Specify the manner in which the applicant will provide comprehensive services, including agreements with public and private entities to provide, make referrals to, or coordinate the provision of those services to children and their families through the program established under Head Start, the Head Start Transition Project Act, or another comprehensive program;

(8) Provide for the direct participation of parents, as provided in section 662(c) of the Act, and include a certification that the application has been approved by a committee that represents parents or children who participate, and parents of children who are likely to participate, in the project;

(9) Describe how the applicant proposes to coordinate Follow Through services with services under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (ESEA), the Bilingual Education Act, and the Individuals with Disabilities Education Act (formerly the Education of the Handicapped Act);

(10) Demonstrate that the—

(i) Applicant has entered into a formal arrangement with local Head Start programs and other preschool programs for cooperation and activities as are necessary to ensure an effective transition of eligible children entering the Follow Through project carried out by the applicant; and

(ii) Follow Through activities to be provided by the applicant have been specifically designed to coordinate with, and build on, those activities provided to participants in local Head Start or other similar preschool programs;

(11) Describe the expected or, if possible, actual impact of the project on the applicant's regular school program; and

(12) Contain—

(i) A certification that the applicant submitted the application to the State educational agency (SEA) for a reasonable period for comment before submitting the application to the Secretary; and

(ii) Any comments received from the SEA during the comment period.

(b) *Follow Through and Chapter 1 Schoolwide Projects.* An LEA that receives a Follow Through grant to carry out a project in an elementary school that receives funds under part A of chapter 1 of Title I of the ESEA, and is designated as a schoolwide project under section 1015(a) of the Act, may use the Follow Through grant to serve all children attending that school in kindergarten through grade 3. In addition, Follow Through grant funds may be expended to pay 100 percent of the approved costs of the Follow Through project in the schoolwide project school.

In accordance with section 666(a)(2) of the Follow Through Act, an LEA that receives a Follow Through grant for use in a chapter 1 schoolwide project must include in the evaluation of the project a comparison of children who receive only chapter 1 services with children who receive services under both chapter 1 and Follow Through. The purpose of this comparison is to determine whether the comprehensive services provided by the model Follow Through approach had a positive effect on the educational and developmental progress of the children eligible for Follow Through services. To the extent practicable, the comparison must be made on the basis of results of evaluations required by chapter 1 and evaluations required by § 215.22(g) of the Follow Through regulations.

(c) *Limitations on Technical Assistance.* (1) Technical assistance with respect to a particular model Follow Through approach may not be provided to an LEA for more than five years.

(2) In the case of an LEA that has received technical assistance regarding a particular model Follow Through approach prior to November 3, 1990, the Secretary may limit the provision of technical assistance regarding that particular model approach to three fiscal years.

(d) *Sponsors.* A Follow Through model sponsor is a public or private nonprofit agency, organization, or institution that receives a grant to assist local projects in implementing a model approach by providing technical assistance and training to improve the school performance of children participating in the project. A Follow Through sponsor submits a joint application with one or more LEAs that will implement the innovative approach developed by the sponsor. A sponsor may apply with no more than five local projects.

(e) *Research Grants.* The Secretary may award grants to public and private nonprofit agencies, institutions, and organizations to develop new model Follow Through approaches to meet the special needs of children who are eligible to participate in Follow Through projects. The new model approaches must include strategies for local projects to include comprehensive educational, health, nutritional, social, and other services that will aid in the continued development of children eligible to participate in a local Follow Through project.

Priority

The Secretary gives preference to applications that meet the following competitive priority:

For purposes of making grants to LEAs for local projects under section 662 of the Follow Through Act, the Secretary will give priority to any LEA that requests a grant for purposes of carrying out a Follow Through program in a school that—

(1) Is designated as a schoolwide project under section 1015(a) of Chapter 1 of Title I of the ESEA; and

(2) Has a high concentration of children from low-income families in kindergarten and primary grades who were previously enrolled in Head Start or similar quality preschool programs.

Under 34 CFR 75.105(c)(2)(i), an application that meets this competitive priority in a particularly effective ways receives from the Secretary 25 points in addition to any points the application earns under the selection criteria for the program. However, to receive the additional 25 priority points, an application must first obtain a rating of at least 70 points as provided in § 215.24(a) of the regulations. In addition, to determine the average points awarded to local project applications contained in a joint application, as required in § 215.20(b)(3) of the regulations, priority points are included in the calculation of the average.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for these criteria is 100 points for local projects and 100 points for sponsors.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria for local project grants.*—(1) *Educational component.* (25 points) The Secretary reviews each application for a local Follow Through project contained in a joint application to determine the capability of the applicant to implement a sponsor's approach, including information concerning the applicant's accomplishments to date, where appropriate. The Secretary also reviews each application for the percentage of low-income children and the percentage of children with preschool experience who will participate in the project.

(2) *Parent participation component.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to provide for active participation of Follow Through parents in the development, conduct, and overall direction of project activities.

(3) *Support services component.* (10 points) The Secretary reviews each application to determine the quality of the support services the applicant will provide to Follow Through children.

(4) *Demonstration component.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to—

(i) Demonstrate effective practices in the delivery of Follow Through services; and

(ii) Provide opportunities for observation of all aspects of the project.

(5) *Quality of key personnel.* (5 points) (i) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project including—

(A) The qualifications of the project director;

(B) The qualifications of each of the other key personnel;
and

(C) The time that each person referred to in paragraphs (b)(5)(i) (A) and (B), will commit to the project.

(ii) To determine personnel qualifications under paragraphs (b)(5)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(6) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project;

(ii) Costs are reasonable in relation to the objectives of the project; and

(iii) The applicant provides for the coordination of Follow Through services with existing local resources.

(7) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan and any evaluation results to date, including—

(i) Methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(ii) The extent to which an applicant's evaluation design meets the standards established in 34 CFR 215.34.

(c) *The criteria for sponsor grants.*—(1) *Educational approach.* (25 points) The Secretary reviews the application for a Follow Through sponsor grant contained in each joint application to determine the effectiveness of the innovative educational approach the applicant has developed to improve the school performance of low-income children in kindergarten and primary grades.

(2) *Implementation assistance.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to assist the local projects with which it is affiliated in implementing the applicant's approach, including—

(i) Providing orientation and training to Follow Through staff, parents, and other appropriate personnel;

(ii) Recommending or making available necessary materials;

(ii) Helping to identify available public and private resources that can contribute to the development of a comprehensive project;

(iv) Monitoring implementation; and

(v) Providing additional technical assistance, as appropriate.

(3) *Demonstration and dissemination.* (20 points) The Secretary reviews each application to determine the quality of the applicant's plan to demonstrate and disseminate information about effective Follow Through practices to public and private school officials, including the extent to which the applicant will—

(i) Assist local projects with which it is affiliated in demonstrating effective practices;

(ii) Encourage adoption of those effective practices by other public and private schools;

(iii) Provide training and technical assistance to persons interested in adopting the effective practices; and

(iv) Follow the progress of the adopted practices.

(4) *Quality of key personnel.* (5 points) (i) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(A) The qualifications of the project director;

(B) The qualifications of each of the other key personnel; and

(C) The time that each person referred to in paragraphs (c)(4)(i) (A) and (B) will commit to the project.

(ii) To determine personnel qualifications under paragraphs (c)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation.* (25 points) The Secretary reviews each application to determine the quality of the evaluation plan and any evaluation results to date, including—

(i) Methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(ii) The extent to which an applicant's evaluation design meets the standards established in 34 CFR 215.34.

(d) *Other factors considered in reviewing a joint local project-sponsor application.* (1) To obtain a total score for a joint application, the Secretary—

(i) Averages the points awarded to all local projects contained in the joint application; and

(ii) Adds that local project average score to the sponsor's score.

(2) The Secretary awards a grant to a local project only if the applicant—

(i) Obtains a rating of 70 points from the selection criteria for local projects, exclusive of any points received under the competitive priority established in section 662(a) of the Follow Through Act; and

(ii) Meets the requirements in 34 CFR 215.4.

(3) Under a joint local project-sponsor application, the Secretary—

(i) Awards a grant to a sponsor only if a grant will be made to at least one local project that will implement the sponsor's approach; and

(ii) Does not award a grant to any local project applicant included in the joint application, even if the local project applicant scores 70 points or more, if the joint application does not rank sufficiently high to receive funding.

(e) *The criteria for research grants.*—(1) *Meeting the purposes of the authorizing statute.* (35 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national

origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points) (i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel;

(C) The time that each person referred to in paragraphs (e)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (e)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(**Cross-reference:** See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs:

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990, pages 38210 and 38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.014, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.014, Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.014, room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED–80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary

Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions;

(Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department).

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 2043), Washington, DC 20202–6132. Telephone (202) 401–1692, Deaf and hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. 7 p.m., Eastern time.

Program Authority: 42 U.S.C. 9861–9869.

Dated: April 4, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 0 1 4

TITLE: Follow Through Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

An applicant should review the Follow Through Act as amended by title II of Public Law 101–501, and the current regulations in 34 CFR part 215 as amended in this issue of the **Federal Register.**

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package;

3. Provide evidence that the applicant has made a formal arrangement to receive technical assistance and training from the model's sponsor;

4. Specify the data and the criteria used to identify low-income children;

5. Provide program and budget information related to the local cost contribution to the program; and

6. Include any other pertinent information that might assist the Secretary in reviewing the application.

Section 663(b) of the Follow Through Act specifies the contents of a local project application. These items should be included in an applicant's discussion of its projects as follows.

A local project applicant should ensure that the description of its instructional component includes the following items prescribed in section 663(b) of the Follow Through Act:

1. Information that the instructional program, including textbooks and other materials provided by the applicant, is appropriate to the ages and developmental needs of the children to be served by the project and the model approach.

2. A description of the model Follow Through approach the applicant intends to use, and the manner in which the applicant will implement the approach.

3. A specification of the manner in which the applicant will provide comprehensive services, including through agreements with public or private entities to provide, make referrals to, or coordinate the provision of services to children and their families through the program established under Head Start, the Head Start Transition Project Act, or another comprehensive program.

4. A description of how the applicant proposes to coordinate Follow Through services with services under chapter 1 of title I of the Elementary and Secondary Education Act, the Bilingual Education Act, and the Individuals with Disabilities Education Act (formerly the Education of the Handicapped Act).

5. Information that demonstrates that the applicant has entered into a formal arrangement with local Head Start programs and other preschool programs for cooperation and activities that are necessary to ensure an effective transition of eligible children entering the applicant's Follow Through project.

6. Information that demonstrates that the applicant's proposed Follow Through activities have been specifically designed to coordinate with, and build on, those activities provided to participants in local Head Start or other similar preschool programs.

7. A description of the expected or, if possible, actual impact of the project on the applicant's regular school program.

In addition, a local project applicant's parent participation component should include the certification, required by section 663(b)(8) of the Act, that the application has been approved by a committee that represents parents of children who are likely to participate in the project.

In accordance with 34 CFR 215.34, section 666(a) of the Act, and 34 CFR 75.590, an applicant's evaluation component should include—

- Proposed strategies for assessing the project's effectiveness in achieving the stated goals and objectives;
- Plans to implement the requirements of section 666(a) of the Act and § 215.34 of the regulations;
- A plan to conduct an annual evaluation and an assurance that the applicant will submit the results as a part of the annual performance report (OMB–1818–0550; Exp. 09–03–91) required by § 75.720 of EDGAR; and
- A plan to evaluate the impact of related project components.

A local project applicant who proposes to carry out a project in a chapter 1 schoolwide project should also describe its plan for implementing the evaluation requirements in section 666(a)(2) of the Act.

In addition, section 663(b) of the Act requires that a local project must include—

1. A provision that the program for which assistance is requested will be administered by or under the supervision of the applicant;

2. An assurance that the applicant will prepare, and submit to the Secretary, regular evaluations of and reports concerning the program;

3. An estimate of the number of children who are eligible for Follow Through services in the geographical area served by the program and the approximate number to be served by the program;

4. A certification that the applicant submitted the application to the State educational agency (SEA) for a reasonable period for comment before submitting the application to the Secretary, together with any comments received from the SEA during the comment period. (Please note that this is different from the Intergovernmental Review as required by Executive Order 12372.)

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 15 double spaced, typed pages (on one side only). The Department has found that successful applications under this program generally meet this page limit.

Under the Head Start Transition Project Act, the Secretary of the Department of Health and Human Services may make demonstration grants to Head Start agencies and local educational agencies (LEAs) to develop and operate programs that provide for a smooth transition of children from Head Start to kindergarten and enable elementary schools to adopt the Head Start model for supportive services and parental involvement. For those LEAs interested in applying for a Follow Through grant and a Head Start Transition Project grant, this application may be considered the first part of a joint application authorized by section 669A(b) of the Follow Through Act and section 139 of the Head Start Transition Project Act. The Department of Health and Human Services and this Department agree that to the extent information in your Follow Through application also meets the application requirements for a Head Start Transition Project grant, you may incorporate that information in your Head Start Transition Project application. The remaining Head Start Transition Project requirements would need to be addressed separately in that application.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1810–0003, Washington, DC 20503.

(Information collection approved under OMB control number 1810–0003. Expiration date: June 30, 1991.)

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant

---

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional Distric., if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 91-8631 Filed 4-11-91; 8:45 am]
BILLING CODE 4000-01-C

Authorized for Local Reproduction
Standard Form - LLL-A

federal register

Friday
April 12, 1991

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Criteria for Medicare Coverage of Adult Liver Transplants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-648-FN]

RIN 0938-AE96

Medicare Program; Criteria for Medicare Coverage of Adult Liver Transplants

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice provides for Medicare coverage of liver transplantations in adults under certain circumstances. We are providing coverage for adult liver transplants based on our determination that liver transplants are medically reasonable and necessary services if furnished to adult patients with certain conditions and if furnished by particpating facilities that meet specific criteria, including patient selection criteria.

FOR FURTHER INFORMATION CONTACT: Vilis Kilpe, M.D., (301) 966-9365.

EFFECTIVE DATE: This notice is effective on April 12, 1991, and permits, under certain circumstances, coverage of adult liver transplants as early as March 8, 1990, which was the date of publication of the proposed notice. Section VII of this notice contains a detailed discussion of the effective dates of coverage.

SUPPLEMENTARY INFORMATION:

I. Background

Administration of the Medicare program is governed by the Medicare law, title XVIII of the Social Security Act (the Act). The Medicare law provides coverage for broad categories of benefits, including inpatient and outpatient hospital care, skilled nursing facility (SNF) care, home health care, and physicians' services. It places general and categorical limitations on the coverage of the services furnished by certain health care practitioners, such as dentists, chiropractors, and podiatrists, and it specifically excludes some categories of services from coverage, such as cosmetic surgery, personal comfort items, custodial care, routine physical checkups, and procedures that are not reasonable and necessary for diagnosis or treatment of an illness or injury. The statute also provides direction as to the manner in which payment is made for Medicare services, the rules governing eligibility for services, and the health, safety and quality standards to be met in institutions furnishing services to Medicare beneficiaries.

The Medicare law does not, however, provide an all-inclusive list of specific items, services, treatments, procedures, or technologies covered by Medicare. Thus, except for the examples of durable medical equipment in section 1861(m) of the Act, and some of the medical and other health services listed in sections 1861(s) and 1862(a) of the Act, the statute does not specify medical devices, surgical procedures, or diagnostic or therapeutic services that should be covered or excluded from coverage.

The intention of Congress, at the time the Medicare Act was enacted in 1965, was that Medicare would provide health insurance to protect the elderly or disabled from the substantial costs of acute health care services, principally hospital care. The program was designed generally to cover services ordinarily furnished by hospitals, SNFs, and physicians licensed to practice medicine. Congress understood that questions as to coverage of specific services would invariably arise and would require specific coverage decisions by those administering the program. It vested in the Secretary the authority to make those decisions.

Section 1862(a)(1)(A) of the Act prohibits payment for any expenses incurred for items or services "which are not reasonable or necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." We have interpreted this statutory provision to exclude from Medicare coverage those medical and health care services that have not been demonstrated by acceptable clinical evidence to be safe and effective. Effectiveness in this context is defined as the probability of benefit to individuals from a medical item, service, or procedure for a given medical problem under average conditions of use, that is, day-to-day medical practice. On January 30, 1989, we published a notice of proposed rulemaking in the **Federal Register** (54 FR 4302) which describes the process we use in reaching new coverage decisions and reevaluating coverage decisions already made. That notice includes a discussion of our reliance on the Office of Health Technology Assessment (OHTA) of the Public Health Service (PHS) for medical and scientific advice. These functions continue to be performed by the OHTA, which is now within the PHS' Agency for Health Care Policy and Research.

OHTA conducted an assessment of liver transplantation in 1983. At that time, the procedure was determined to be experimental in adults because its safety and efficacy had not been demonstrated. However, liver transplantation to treat children with extrahepatic biliary atresia and other end-stage liver disease was considered safe and effective. Therefore, based on its "reasonable and necessary" criteria, the Department concluded that liver transplantation in children should be covered by Medicare and that liver transplantation in adults (age 18 and above) should not be covered. Although few children requiring this procedure have been eligible for Medicare benefits, the Medicare decision probably served to encourage Medicaid and private insurers to provide coverage for some children requiring liver transplantation.

In 1986, the Department of Health and Human Services' Task Force on Organ Transplantation issued a report recommending that Medicare provide coverage for liver transplantation in adults. Subsequently, HCFA asked the PHS, through OHTA, to review the scientific evidence for the safety and effectiveness of this procedure.

OHTA reported that since the 1983 assessment, there has been a substantial increase in the clinical experience with liver transplantation in the United States as well as Europe. More than 3,500 transplants have been carried out in the United States. OHTA derived the evidence for the safety and effectiveness of this procedure from clinical case reports and from outcomes data published in scientific journals. In the OHTA assessment, the amount of experience with transplantation for a given condition and the 5-year survival rate were important considerations. In a few instances, the 5-year survival rate is so high that coverage has been recommended by the PHS despite limited experience.

Based on their review of data, the PHS experts have recommended that orthotopic adult liver transplantation is safe and effective in the treatment of end-stage liver disease when performed in facilities that meet certain criteria and for patients with one of the following specific conditions:

Primary biliary cirrhosis;
Primary sclerosing cholangitis;
Postnecrotic cirrhosis, hepatitis B surface antigen negative;
Alcoholic cirrhosis;
Alpha-1 antitrypsin deficiency disease;
Wilson's disease; or
Primary hemochromatosis.

Available evidence does not indicate at this time that liver transplantation is effective in treating adult patients with primary or metastatic malignancies of

the liver. Consequently, the PHS does not recommend Medicare coverage, at this time, for liver transplantation performed on patients with these conditions. Also, coverage of liver transplantation was not recommended for patients with other conditions because there is insufficient information to reach conclusions about effectiveness.

The PHS also has concluded that survival rates are associated with the condition of the patient at the time of surgery and the characteristics of the treatment facility. Therefore, the recommendations include specific criteria for selecting patients who might be candidates for surgery and identifying facilities where the procedure can be performed safely and effectively.

On March 8, 1990, we published notice of our intent to provide coverage of liver transplantations in adults under certain circumstances (55 FR 8545).

II. Summary of Provisions of Proposed Notice

In the proposed notice, we announced our intent to issue a national coverage decision, under section 1862(a)(1)(A) of the Act, that, for Medicare coverage purposes, liver transplants in adults with certain specified conditions are medically reasonable and necessary if performed in facilities that meet certain criteria and that are approved by the Secretary for liver transplants. We proposed that, for facilities that are approved, Medicare would cover under Part A (Hospital Insurance) all medically reasonable and necessary inpatient services. For facilities receiving Medicare payment under the Medicare prospective payment system, we proposed to use the diagnosis related group (DRG) classification 478 with a relative weight of 21.000 and a 64-day outlier threshold.

We also proposed the following:

- The application procedure.
- The process for review and approval of facilities.
- Guidelines for patient selection criteria.

III. Discussion of Comments

We received 66 timely items of correspondence in response to the proposed notice. Of these, 29 were from hospitals and transplant centers, 16 were from professional associations, 12 were from Health Maintenance Organizations (HMOs) and other risk contractors, 4 were from government entities, and 5 were from private citizens. The comments ranged from general support or opposition to the proposed coverage of liver transplants to very specific questions or comments related to the list of indications for which liver transplants will be covered. A summary of the comments, and our responses to them, follow.

A. Coverage Issues

Comment: Several commenters objected to the waiting period of 29 months between the onset of a disability and the beginning of Medicare coverage for a disabled individual. They thought a waiting period of 29 months is too long.

Response: This requirement is based on sections 223(c)(2) and 226(b)(2)(A) of the Act and is not a requirement adopted specifically for liver transplant recipients. Under section 226(b)(2)(A) of the Act, a Social Security disability beneficiary must receive disability insurance benefits under Social Security for 24 months before becoming entitled to Medicare benefits. In addition, section 223(c)(2) of the Act provides that the beneficiary must serve a 5-month waiting period from the date of onset of disability before cash benefits begin. It is true that this statutory waiting period for Medicare coverage on account of disability would disadvantage an individual who requires a transplant before completion of the waiting period. However, this result flows directly from the general provisions relating to Medicare eligibility and is not particular to transplant recipients. Our decision to extend coverage to liver transplants does not change any statutory provisions regarding either coverage or eligibility.

Comment: Several commenters thought that Medicare should provide coverage and payment for immunosuppressive therapy for as long as a patient remains a Medicare beneficiary.

Response: Section 9335(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) amended section 1861(s) of the Act to provide for the coverage of immunosuppressive drugs under Medicare, beginning January 1, 1987, for up to 1 year following the date of a Medicare-covered transplant. (We have implemented these new coverage provisions to permit coverage of immunosuppressive drugs for up to 1 year following the date of discharge from an inpatient hospital stay during which a covered transplant was performed.) Congress would have to change the law to provide coverage of immunosuppressive drugs for more than 1 year.

B. Clinical Conditions

Comment: Of the 66 commenters responding to the notice, 7 objected to including alcoholic cirrhosis as a covered indication. One other commenter thought it should be a low priority indication. The various reasons for the objections included: There is no guarantee that abstinence would be maintained or that the transplant candidate would comply with the immunosuppressive therapy; the condition is clearly a self-inflicted complication resulting from a chosen lifestyle; coverage would undermine efforts at treatment and rehabilitation of alcoholics; and coverage would be a misallocation of government funds.

Response: We do not agree that coverage of transplants for individuals with alcoholic cirrhosis should be excluded. As mentioned in the proposed notice, available data suggest that the procedure is safe and effective for these patients under specified conditions. In these cases, we would require that the patient meet the hospital's requirement for abstinence and have documented evidence of the social support essential to assure both recovery from alcoholism and compliance with immunosuppressive therapy.

Comment: In the proposed notice we indicated that Medicare provides for coverage of liver transplantation for children under age 18 with extrahepatic biliary atresia. Several commenters thought that Medicare should provide for coverage of liver transplantation for children for other indications.

Response: The statement regarding coverage of liver transplantation for children with extrahepatic biliary atresia does not reflect the entire Medicare coverage policy as stated in our manual instruction to our contractors. The statement should have said that coverage is provided for children with extrahepatic biliary atresia or any other form of end-stage liver disease, except that coverage is not provided for children with a malignancy extending beyond the margins of the liver or those with persistent viremia.

Comment: We had proposed portal vein thrombosis as a contraindication to liver transplantation. Several commenters felt that portal vein thrombosis should not be included as a contraindication.

Response: We agree with these commenters. We now have information from transplant surgeons that indicates that unless the entire abdominal venous system is thrombosed, successful transplantation can be carried out in the presence of portal vein thrombosis. Furthermore, OHTA had reported in its assessment report that portal vein thrombosis was only a relative contraindication in candidates for liver transplantation. We have, therefore,

deleted portal vein thrombosis from our guidelines for patient selection (section II.E. in the proposed notice, section V.E. in this final notice).

Comment: Nearly half of the commenters indicated that the list of covered conditions for liver transplantation is too restrictive and that it does not include conditions such as fulminant hepatic failure, Budd-Chiari syndrome, etc. Many of these commenters believed that liver transplants should be covered for all end-stage liver diseases, except for patients with primary or metastatic malignancies of the liver.

Response: As explained in the notice, the data available to us suggest that the coverage of liver transplantation for the listed indications is safe and effective. In order to determine what other clinical conditions should be covered by Medicare, we will continue to collect data and clinical information on these and other conditions and in the future will request that the PHS's Agency for Health Care Policy and Research review the data to determine if any revision to the current list of covered conditions is necessary.

Comment: One commenter pointed out that hepatitis B, antigen negative is not a disease and that what was probably meant was "hepatitis B, antigen negative postnecrotic cirrhosis" which the commenter called "an awkward phrase for cryptogenic cirrhosis." The commenter stated that these terms refer to end-stage cirrhosis in which a specific etiologic diagnosis has not been made. Furthermore, the commenter indicated that most cases of cryptogenic cirrhosis represent the end stage of autoimmune hepatitis or chronic non-A, non-B (type C) hepatitis.

Response: Review of the original medical journal article (Iwatsuki, S. et al., "Experience in 1000 Liver Transplants Under Cyclosporine-Steroid Therapy: A Survival Report." Transplantation Proceedings 1988, Vol XX, Supplement 1 (February), pp 498–504) referenced in the OHTA Assessment of Liver Transplantation indicates that the category of postnecrotic cirrhosis included chronic active hepatitis and cryptogenic cirrhosis. Furthermore, the hepatitis B antigen referenced in the article was hepatitis B surface antigen (HBsAg). We have therefore revised the clinical indication, "hepatitis B, antigen negative (postnecrotic cirrhosis)" to read "postnecrotic cirrhosis, hepatitis B surface antigen negative."

We recognize that there are various classifications of liver disease and that a variety of terms are used to describe cirrhosis. The term "postnecrotic cirrhosis" may not be entirely satisfactory; however, it is used in the medical literature and refers to cirrhosis of varied etiology and characterized pathologically by a shrunken liver containing large areas of collapse, broad scars, and regenerating nodules up to several centimeters in diameter. The postnecrotic cirrhosis may be due to viruses, drugs, toxins and/or other diseases. Anyone who has been found to be hepatitis B surface antigen negative and has been diagnosed on pathological examination to be cirrhotic, notwithstanding the cause of the postnecrotic cirrhosis, would fall within this classification.

Comment: Several commenters thought that the need for or prior transplantation of a second organ, in particular, a kidney, should not be a contraindication to a liver transplant. They argued that combined kidney/liver transplants have been performed successfully.

Response: We disagree with this comment. There is not enough data available on multi-organ transplantations to fully evaluate their success, and we, therefore, did not consider these types of transplants in conjunction with the publication of this notice. We will continue to follow the issue of multi-organ transplantation.

C. Patient Selection Criteria

Comment: Several commenters suggested that we specify that there be no required period of abstinence for those transplant candidates diagnosed as having alcoholic cirrhosis.

Response: We disagree with this suggestion. We believe the transplant surgeon and the rest of the team are best qualified to determine the suitability of a patient to receive a transplant, and this includes making a decision regarding the need for a period of abstinence.

D. Facility Requirement

Comment: Several commenters requested that we require hospitals to include a physician who is an expert in alcoholism and/or a psychiatrist on the transplant team.

Response: We disagree that this should be a requirement for hospitals. We have no objection to a hospital including a physician who is an expert in alcoholism or including a psychiatrist, but we do not believe it should be required to do so.

Comment: One commenter who agreed with including alcoholic cirrhosis as a covered indication for transplantation suggested, however, that HCFA limit funding for these types of transplantation to those facilities that have experience in attempting to transplant these patients and that the facilities be required to maintain a registry in order to permit the expeditious assessment of efficacy rates.

Response: We disagree with this approach. The reason alcoholic cirrhosis and all the other listed indications are covered is because the information and data collected on these indications have shown that a reasonable success rate has been demonstrated. We have established that transplantations for these indications are reasonable and necessary based on these results; we have found no basis for coverage distinctions among these indications. A liver registry is maintained under contract with the United Network for Organ Sharing, Inc.

Comment: We invited comment on the feasibility of specific facility criteria for coverage of liver transplantation in children. Several commenters responded to this request and asked that we develop special criteria for pediatric hospitals because they were concerned that adoption of the provisions of this notice by other third party payers could adversely affect pediatric liver transplant programs.

Response: As stated above, we specifically invited comment on the feasibility of pediatric facility criteria. Issues have arisen in the past with respect to coverage of pediatric transplants. When we formulated our policies with regard to Medicare coverage of heart transplants, there was concern that children would be disadvantaged by policies that were established for coverage of heart transplants in adults. These issues have arisen again as we finalize our policy with respect to adult liver transplants.

Congress itself addressed the concerns regarding pediatric heart transplants. It enacted section 4009(b) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) which essentially deemed pediatric facilities to be certified as heart transplant facilities if they met certain specified conditions. After careful consideration of the comments received on this notice and our experience with the criteria for pediatric heart transplant facilities, we are adopting the same criteria and are applying them to pediatric liver transplant facilities. The criteria, which represent Congress' view of the appropriate contours for coverage for certain pediatric transplants, have worked successfully in the heart transplant program, and we believe that they answer the concerns of those who

commented on pediatric liver transplants.

Therefore, liver transplantation will be covered for Medicare beneficiaries when performed in a pediatric hospital that performs pediatric liver transplants if the hospital submits an application that HCFA approves as documenting the following:

The hospital's pediatric liver transplant program is operated jointly by the hospital and another facility that has been found by HCFA to meet the institutional coverage criteria in this notice; the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria); and the hospital is able to provide the specialized facilities, services, and personnel that are required by pediatric liver transplant patients.

We are not changing the current covered clinical conditions for which a pediatric liver transplant can be performed. Liver transplantation for children under age 18 is covered for those children with extrahepatic biliary atresia or any other form of end-stage liver disease, except that coverage is not provided for children with a malignancy extending beyond the margins of the liver or those with persistent viremia.

Comment: We had proposed that we would cover only those liver transplantations performed in facilities that demonstrate good patient outcomes, for example, initially a 1-year survival rate of 77 percent for patients receiving a liver transplant. Several commenters suggested that 77 percent was too high and that since even some of the larger transplant centers are not experiencing such a high rate of success as this, it would be even more difficult for the smaller centers to achieve this rate of success.

Response: We will retain the 77 percent 1-year and 60 percent 2-year survival requirements for patients receiving liver transplants because data indicate that such outcomes have been achieved and are realistic for the listed covered indications.

Comment: Several commenters disagreed with the requirement of performing 12 transplants per year. Some suggested the transplant rate should be 20–25 per year, others suggested it should be lower than 12 per year.

Response: We disagree with these commenters. To require more than 12 transplants per year would disadvantage some smaller transplant centers, and to require fewer than 12 would mean that it would be difficult for a facility to gain the experience and demonstrate the commitment necessary to safely and effectively perform liver transplants. A more detailed explanation of this requirement can be found in the OHTA assessment of liver transplantation mentioned in section I (Background) of this final notice.

Comment: One commenter said that there is no mention of cost containment relating to individual facilities. The commenter said that limitations should be spelled out and centers with high costs should be excluded from participation.

Response: Under the prospective payment system (PPS), the payment to hospitals providing liver transplantations to Medicare beneficiaries will be at an established rate. The proposed notice indicated that liver transplants would be classified under DRG 478 with a relative weight of 21.0000. This relative weight was based on FY 1984 Medicare bill data and 1983 and 1984 sample claims from three hospitals. Since this relative weight was calculated, we have reclassified liver transplants as DRG 480 and have recomputed the relative weight on the basis of the most recent data. The FY 1991 DRG 480 weight is 15.2645. This weight is based on 29 liver transplant cases in the FY 1989 Medicare Provider Analysis and Review (MEDPAR) file. The MEDPAR data include detailed information on approximately 10 million Medicare discharges and were used to calculate the liver transplant DRG weight and all other DRG weights. We have also carefully reviewed the final FY 1989 MEDPAR data for liver transplant cases to ensure that they met the proposed coverage criteria and were performed by hospitals that have the potential to become Medicare-approved transplant centers.

The methodology as described in our final rule on PPS and fiscal 1991 rates published in the **Federal Register** on September 4, 1990 (55 FR 35990) used to recalibrate the DRG weights requires a minimum of 10 cases to compute a reasonable DRG weight. Since the FY 1989 MEDPAR data included more than 10 (that is, 29) liver transplant cases that meet the proposed Medicare criteria for coverage, these cases were used to determine the liver transplant DRG weight in a manner consistent with the other DRG weights. The 29 liver transplant cases used to determine the DRG weight of 15.2645 include patients ranging in age from 23 to 69 years of age with only 4 patients over the age of 65.

A more detailed explanation of the methodology used in recomputing the relative weight of DRG 480 can be found in our final rule regarding changes to the inpatient hospital prospective payment system and fiscal year 1991 rates published in the **Federal Register** on September 4, 1990.

Comment: Several commenters suggested that HCFA consider adopting the United Network for Organ Sharing (UNOS) standards to approve liver transplant facilities under Medicare.

Response: We have not accepted this approach. Under section 1862 of the Act, we must determine what services are reasonable and necessary, and we are adopting criteria consistent with those that have been successfully applied for coverage of heart transplants. The criteria that we are establishing to select facilities in which liver transplants may be performed under Medicare ensure that these procedures will be performed safely and efficaciously. Although the criteria for experience, survival rates, and facility commitment are somewhat demanding, our goal is to maintain the quality of services required by this complex procedure. The approval process will remain open, and those facilities that do not now meet the criteria may someday do so. The reader should note that, under section 1138(a)(1) of the Act, a hospital in which organ transplants are performed must be a member of, and abide by the rules and requirements of, the Organ Procurement and Transplantation Network (OPTN). UNOS is under contract to the Department to administer the OPTN. The policies developed by UNOS are currently being reviewed to determine which of them are appropriate to implement as OPTN rules and requirements.

Comment: Several commenters suggested that the experience of the transplant team, rather than the experience of the facility, be used to determine a hospital's fitness as a liver transplant center.

Response: While we understand and appreciate the concern that is evidenced by these comments, we have not been persuaded to change our position that the facility, not the team, is the proper repository for experience and survival rates. The suggestion to base experience on the team rather than the facility also relates to the issue of approval of the type of consortium that is designed to share a single transplant team that rotates among the member hospitals.

We believe we must evaluate hospitals individually and that it is inappropriate to apply the experience of one hospital's team to another hospital that lacks experience but acquires the services of that team. Neither can we aggregate the experience of several hospitals in reviewing applications. Each transplant facility must be willing and able to provide the many resources

that are required to assure a successful transplant program.

While a successful liver transplant team is important, other factors seem to contribute to the development of good experience and survival rates. Thus, a facility must provide not only the transplant team itself, but must provide administrative and operational resources that direct and support the team. Our facility criteria measure a number of factors beyond the qualifications of the transplant team to determine the facility's overall commitment to a successful transplant program.

In addition, the criteria, including the long-term survival rate, are intended to measure a facility's long-range commitment to a liver transplant program. We do not believe that the experience of an individual or group of individuals is a satisfactory substitute for that institutional commitment. Although the loss of key members of the transplant team will require a review by HCFA to ensure that the facility continues to meet the criteria, their acquisition by another facility should not, in our view, permit that other facility to claim the first facility's hard-won experience and success.

Comment: Several commenters objected to our prohibition of applications from consortia and believed that this type of application should be treated the same as individual applications.

Response: We disagree with this comment. The criteria for facility approval are based on the performance of individual liver transplant facilities. They are designed to ensure that Medicare beneficiaries receive only reasonable and necessary liver transplants, which we believe can be provided only at facilities with substantial dedication to and experience with the procedure. Failure to apply these criteria to all the individual members of a consortium would result in the loss of that assurance. Although we will not approve consortia as liver transplant centers, individual members of a consortium may submit individual applications at any time and, if they meet the criteria, they will be approved.

Comment: Several commenters requested that some type of regional access or allocation be allowed in order to ensure that there would be approved liver transplant centers in all regions of the country and that certain populations would not be denied access. Some commenters recommended waiving or easing the facility criteria to ensure that such areas and populations would have approved centers as soon as possible. Many of these commenters pointed out that in various areas of the country travel distances present problems of time and expense, not only for the patient and family members, but for the organs being transplanted.

Response: We have not accepted these comments. We do not propose to ensure an even geographic distribution, nor do we propose to limit the number of facilities that may qualify in a given area. Whether a facility will be approved will depend upon whether the facility meets the coverage criteria set forth in this notice. We recognize the hardship that this may place on some transplant recipients and their families, but we do not believe our position adversely affects the clinical outcomes of the procedures. We also note that the issue of geographic access will probably diminish over time as more centers gain the necessary experience to meet the criteria.

Comment: One commenter believed that our criteria are too restrictive and limit the number of eligible providers.

Response: In the case of liver transplants, we have determined that, in carefully selected patients, managed according to specific protocols by experienced medical teams at institutions with a substantial dedication to and experience with the procedure, liver transplantation has resulted in increased life expectancy and in improved quality of life. We recognize that the proposed criteria for experience, survival rates, and facility commitment are somewhat demanding. However, our goal in requiring facilities to meet certain criteria is not to restrict competition but to maintain the quality of services required by this complex procedure, provide coverage of the benefit at facilities and under conditions that have been shown to be safe and effective, and allow entry of new qualified providers. We believe this approach is justified, particularly in view of the typical relationship between experience and quality of services.

Facilities will continue to be approved as they come to meet the facility criteria. There will be neither a cutoff date for receipt of applications nor a limit on the number of approved facilities, and hospitals that may initiate a liver transplant program may do so with the clear understanding of what criteria they will have to meet.

E. HMOs, CMPs, and HCPPs

Comment: Several health maintenance organizations (HMOs), competitive medical plans (CMPs), and Health Care Prepayment Plans (HCPPs) contracting with HCFA for the care of Medicare beneficiaries and one entity representing such organizations stated that it is unfair to require these organizations to cover liver transplants for their Medicare enrollees. Instead, HCFA should administer this benefit separately for enrollees of such organizations and all costs, including coinsurance and deductible costs, should be borne by HCFA, either as a separate payment or in a manner similar to the way Medicare hospice benefits are provided to the Medicare enrollees of HMOs and CMPs. The commenters suggested that if HCFA cannot pay separately for liver transplants and associated costs, it should delay the effective date of coverage for liver transplants until the 1991 contract year, so that organizations can adjust their premium and benefit levels and HCFA can adjust its payments to organizations to account for the new service.

Response: HMOs, CMPs and HCPPs contract with Medicare on an annual basis for care of Medicare beneficiaries who enroll with their organizations. HMOs and CMPs are required to furnish the full range of covered services under Parts A and B to Medicare enrollees, except for hospice benefits under section 1812(a)(4) of the Act. HCPPs furnish no part A services and may choose to cover less than the full range of Part B covered services, within certain limitations. Beneficiaries enrolled in risk contracting organizations are required to receive all services covered under the plan from or through the organization; if this restriction, commonly called the lock-in restriction, is violated, neither the organization nor Medicare is required to pay for the service. There are no lock-in restrictions for enrollees of cost-contracting organizations.

Medicare pays HMOs and CMPs contracting on a risk basis amounts that are fixed in advance at the beginning of each calendar year and are based on average costs for similarly situated Medicare beneficiaries who reside in the counties from which the organization draws its enrollees, but who are not enrolled in the organization. Medicare pays an HMO, CMP, or HCPP contracting on a cost basis the reasonable costs incurred by the organization in furnishing covered Medicare services to its enrollees. In addition, organizations collect directly from beneficiaries, often by fixed monthly premium payments and/or copayments at the time of service. Insofar as these premium and copayment amounts are for Medicare covered services, they may not exceed the actuarial value, in the aggregate, of Medicare deductibles and coinsurance attributable to Medicare covered

services. Additional amounts may be charged for supplemental services an organization chooses to include in its benefit plan. HMOs and CMPs are not permitted to increase their charges to Medicare enrollees or to decrease the scope of services offered during the term of the contract. HCPPs must agree not to charge Medicare enrollee amounts in excess of the applicable Medicare deductibles and coinsurance for covered services.

Medicare's payments to organizations contracting on a risk basis cannot be adjusted at the conclusion of the contract term to account for actual use of Medicare covered services by enrollees. Medicare's payments to cost-contracting HMOs, CMPs, and HCPPs are adjusted at the end of the contract term to account for actual use of services, but Medicare deducts the normal parts A and B deductible and coinsurance amounts from the adjustment. All HCPPs and some HMOs and CMPs contract on a cost basis.

We cannot agree to these commenters' requests that HCFA exclude liver transplants and associated services from the scope of services that must be furnished by HMOs and CMPs. Section 1876(c)(2) of the Act provides that HMOs and CMPs must provide all services covered under Parts A and B, for persons entitled to Parts A and B respectively, that are available to beneficiaries residing in the geographic area served by the organization. A statutory change contained in section 4204(c) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) provides that HMOs/CMPs contracting on a risk basis are not responsible for paying for new or expanded services required by a national coverage determination until the costs for those services are included in the Adjusted Average Per Capita Cost (AAPCC) calculation. This statutory change is effective January 1, 1991. However, this change does not apply to liver transplants because the costs of adult liver transplants are included in the AAPCC calculations for 1991. Thus, no payment beyond the regular capitation amounts will be paid to risk HMOs and CMPs for covered adult liver transplants furnished to enrollees in 1990 or in any year following. However, the 1990 AAPCC rate did include allowance for benefits including long term hospitalization under the Medicare Catastrophic Coverage Act (Pub. L. 101–234), which was subsequently repealed.

Coverage of liver transplants is not comparable to hospice benefits, and it is not equitable or desirable to treat them similarly for the purposes of HMOs and CMPs. Hospice benefits are unique in that they represent an alternative form of treatment from regular Medicare program benefits, and accordingly the law provides that a beneficiary who elects hospice benefits does so in place of coverage of all other benefits related to the terminal condition. The beneficiary formally waives coverage of all Part A and B services related to his or her terminal condition. Regulations at 42 CFR 417.414(a)(3) exclude hospice services under Medicare from the usual Part A and B scope of services that must be provided by HMOs and CMPs. Medicare enrollees of HMOs and CMPs who elect hospice benefits under Medicare are, in effect, suspended from their enrollment in the organization for most Medicare services related to the terminal condition and instead receive palliative treatment only from the hospice. HCFA also adjusts the payment to the organization by subtracting the cost for providing Parts A and B services to the enrollee (called the organization's adjusted community rate) from the monthly payment due the organization. If any Part A or Part B covered services are provided by an HMO or CMP to a hospice patient, such as those not related to the terminal condition or attending physician services, the HMO or CMP bills Medicare for them on a fee-for-service basis. The hospice is paid separately for the services it provides under rules at 42 CFR part 418.

HCPPs contracting with Medicare under section 1833(a)(1)(A) of the Act do not provide benefits under Part A, so they are not required to pay for the majority of services that are covered if a beneficiary receives a covered liver transplant. HCPPs will be paid 80 percent of their reasonable costs of covering liver transplant-related Part B services, less applicable deductible amounts. HMOs/CMPs contracting with Medicare on a reasonable cost basis will similarly be paid the reasonable costs they actually incur in connection with covered liver transplants less applicable coinsurance and deductibles. The applicable coinsurance and deductibles are recouped through premium and other charges to beneficiaries. We cannot adjust risk-basis HMO/CMP payment amounts to include costs of liver transplants until January 1991, however, because section 1876(a)(1)(A) of the Act requires the Secretary to determine payment rates annually in advance for each calendar year and does not permit retroactive adjustment of payment rates.

HCFA does not believe it is appropriate to change the effective date for liver transplant coverage. Section 1862(a)(1)(A) of the Act requires the Medicare program to pay for items and services that are reasonable and necessary for diagnosis and treatment of an illness or an injury. We determined on March 8, 1990 that liver transplants are reasonable and necessary treatment under the conditions delineated in this notice that ensure that such services are safe and effective. We believe we are legally precluded from delaying coverage of these services and, thus, denying Medicare beneficiaries the benefit of this treatment for an interim period after we have already determined that such transplants are reasonable and necessary if performed under certain conditions.

Comment: An HMO suggested that patients requiring liver transplants should be barred from enrolling in an HMO or CMP that contracts on a risk basis with Medicare.

Response: Section 1876(d) of the Act provides that every individual enrolled in Parts A and B of Medicare, or Part B only, may enroll with any HMO or CMP contracting with Medicare that serves the geographic area in which the beneficiary resides, except for persons medically determined to have end stage renal disease (ESRD). Section 1876(b)(3)(A)(i) of the Act requires that during any open enrollment period, HMOs and CMPs must accept all eligible individuals, up to the limits of their capacity and without restrictions, except as may be authorized in regulations. Regulations at 42 CFR 417.422 define the criteria for eligibility to enroll in an HMO or CMP and exclude from eligibility persons who have been determined to have ESRD or who have elected hospice benefits under Medicare. Beneficiaries who have elected hospice benefits under Medicare, by definition, are expected to live 6 months or less. This fact, coupled with the requirement that beneficiaries elect the hospice benefit in place of Parts A and B services that are related to the terminal condition (as discussed above), formed the basis for our decision to permit HMOs and CMPs to deny enrollment to beneficiaries who have elected hospice benefits. Another factor is that hospice care is an election that may be revoked by the beneficiary at any time and that, if revoked, the beneficiary is then eligible to enroll in an HMO or CMP. These two instances are the only exceptions to the rule that HMOs and CMPs may not screen enrollees based on their health status. In fact, if a current enrollee of an HMO or CMP develops ESRD or elects the hospice benefit, the organization may not disenroll that person. The law does

not permit health screening in part because our payments to HMOs and CMPs are based on average costs of all beneficiaries in the county of residence in the rating group (rating groups are based on age, sex, disability, institutionalization, and welfare status). To permit HMOs and CMPs to disenroll or deny enrollment to sicker beneficiaries would skew payments and be unfair to beneficiaries.

Comment: An organization representing HMOs, CMPs, and HCPPs requested that the ruling clarify that enrollees of organizations contracting on a risk basis may not refer themselves for liver transplants out-of-plan and that lock-in restrictions apply to this benefit. This organization and several HMOs also requested that HCFA make an exception to the requirement that liver transplants be performed at centers which have been approved for that service, if an emergency prevents the procedure from being performed at a liver transplant center approved by HCFA.

Response: The requirement at 42 CFR 417.448 that the services must be furnished by the organization or through arrangements made by the organization applies to liver transplants.

Under 42 CFR 417.416, HMOs and CMPs must supply or arrange for Medicare-covered services to be provided by providers and suppliers that meet the Medicare conditions of participation and coverage. If, even on an emergency basis, a liver transplant occurs at a hospital that has not been approved as a Medicare liver transplant facility, it would not be a covered service. Neither Medicare nor the HMO or CMP would be required to pay for this service.

Comment: A HMO wanted to know if HMOs and CMPs would be held liable for denying liver transplants to persons during the period of March 8, 1990 and the date of this final notice.

Response: No HMO or CMP will be subject to sanctions for failure to arrange for or authorize liver transplants to otherwise eligible enrollees for the period between March 8, 1990 and the date of this notice. Risk HMOs and CMPs must, however, cover liver transplants actually received by enrollees if the liver transplants were performed after March 8, 1990 at a transplant center which is approve by HCFA based on the conditions in this notice to perform that service, just as the Medicare program will cover such transplants for beneficiaries who are not enrolled in an HMO or CMP. In such cases, the transplant would be deemed to be authorized by the HMO/CMP, since it could not actually have been authorized as a covered service prior to this notice. After the date of this notice, a Medicare-covered transplant will only be covered by a risk HMO or CMP if it is authorized by the HMO or CMP or if it is determined on reconsideration that coverage was improperly denied.

Comment: An HMO requested that HCFA develop a specific rating group for enrolled beneficiaries who have undergone a liver transplant, similar to the special rating category in effect for enrollees who have ESRD.

Response: We cannot agree with this commenter's request to develop a specific rating group for beneficiaries who have undergone a liver transplant. The expansion of Medicare coverage to include liver transplants is not comparable to the situation involving ESRD beneficiaries. ESRD, rather than being a Medicare covered service, is a basis for Medicare entitlement. Specific rates developed for ESRD, as for the aged and disabled, reflect the distinct category of beneficiary.

As with previous coverage expansions, payment for liver transplants will be incorporated into the existing per capita rating groups. However, if a diagnosis-related cost adjustment to the payment rates is later adopted, perhaps liver transplant enrollees will fall into a higher payment group.

F. Miscellaneous

Comment: One commenter suggested that since live liver donation is a viable option for transplantation, HCFA should consider providing criteria for those centers that wish to provide this type of transplantation.

Response: We have not accepted this comment. Live liver donation in use for transplantation is still considered an investigational procedure, and the recipients are predominately children. We, therefore, do not feel it necessary to provide any criteria for this type of liver transplantation. In addition, the OHTA assessment report was based on the use of orthotopic adult liver transplantations.

Comment: One commenter suggested we create a conditional designation status for facilities that have not done the required number of liver transplants but have experience with other types of organ transplants.

Response: We have rejected this suggestion to grant conditional approvals to facilities that do not meet the required experience criteria. Such approvals are not consistent with the intent of the criteria, which is to ensure that Medicare beneficiaries in need of liver transplants receive them only in facilities with substantial dedication to and experience with the procedure. While we agree that significant experience in other organ transplants is of value and should be taken into account in the review of a facility's application, we do not believe that other organ transplants are sufficiently analogous to liver transplants to permit an exception to the criteria based on the substitution of the experience for the required experience in liver transplants.

Comment: One commenter noted that we have stated that facility-specific heart transplant coverage has been a great success but we have not offered any data to support that contention.

Response: As of this writing, 46 facilities have been approved by Medicare to perform heart transplants. Of these 46, only 13 have been performing Medicare-covered transplants for 4 years. The other 33 have been performing them for 3 years or less. Therefore, we are just now beginning to experience the numbers of transplants necessary to gather meaningful data. The data gathering process has begun, and we will offer those data to the public at a future date.

Comment: Several commenters indicated that a facility retransplantation rate should be considered a critical requirement for approval as a liver transplant facility.

Response: We disagree with the notion of considering the retransplantation rate as a critical requirement because we do not have enough data to employ it as a qualifying criterion. We are, however, requiring reporting of the retransplantation rate per year for the last 2 years as part of the data collection requirements contained in section V.A. 5. We have included this requirement to obtain a better overall picture of the facility's experience with liver transplants.

IV. Summary of Changes

We have listed below the changes made from our proposal. Changes 2, 3, and 4 are discussed in section III of this notice.

1. We are using the DRG classification 480, "Liver transplants" (rather than 478, "Liver transplants") and have established a relative weight of 15.2645 (rather than 21.000). This relative weight was determined using the methodology established by our September 4, 1990 final rule on FY 1991 prospective payment rates for hospitals (55 FR 35990).

2. We are deleting portal vein thrombosis, as a contraindication to transplant, from the guidelines for patient selection criteria for liver transplants.

3. Our proposed notice listed "hepatitis B, antigen negative (postnecrotic cirrhosis)" as a qualifying clinical condition. This has been corrected to "postnecrotic cirrhosis, hepatitis B surface antigen negative".

4. In section V.B.5 of this notice (which concerns experience and survival rates), we are including the requirement that hospitals submit data on their retransplantation rates.

V. Provisions of This Notice

We are providing a national coverage decision, under section 1862(a)(1)(A) of the Act, that, for Medicare coverage purposes, liver transplants in adults with certain specified conditions are medically reasonable and necessary if performed in facilities that meet certain criteria and are approved by HCFA for liver transplants. A facility that wishes to obtain coverage of liver transplants for its Medicare patients must submit an application and supply documentation showing its initial and ongoing compliance with each of the criteria.

For facilities that are approved, Medicare will cover under Part A (Hospital Insurance) all medically reasonable and necessary inpatient services. For facilities receiving Medicare payment under the Medicare prospective payment system, we will use DRG classification 480, "Liver transplants." We have established a relative weight of 15.2645 for DRG 480 and a 52-day outlier threshold. (DRG 480 has the highest relative weight among the 490 DRGs.) Organ acquisition costs will be paid separately on a cost basis. Physician services related to the transplant, as well as non-hospital services related to pre- and post-transplant care, will be covered under Part B (Supplementary Medical Insurance) and paid based on the generally applicable rules for Part B. Outpatient, self-administrable drugs used in immunosuppressive therapy, such as cyclosporine, are covered under Medicare for a period of up to 1 year beginning with the beneficiary's date of discharge from the inpatient hospital stay during which a covered organ transplant was performed. Medicare will cover retransplants in approved facilities only if the initial transplant was performed for a covered condition, regardless of whether it was a Medicare-covered transplant.

If a Medicare beneficiary receives a covered liver transplant from an approved facility, reasonable and necessary services for followup care and for complications are covered, as determined by our contractors, even if such services are furnished by a facility that, although eligible for Medicare payment, is not specifically approved as a Medicare liver transplant facility.

Medicare will not cover liver transplants or retransplants in facilities that have not been approved as Medicare liver transplant facilities. If a Medicare beneficiary received a liver transplant from a facility that is not approved as a Medicare liver transplant facility or received a liver transplant for a condition for which a transplant is not covered under Medicare, we will not cover any inpatient services associated with the transplantation procedure. In such cases, physician services associated with the transplantation procedure are not covered. Thus, payment will not be made for the performance of the transplant or for any other services associated with the transplantation procedure if performed in a non-approved facility.

However, after a beneficiary has been discharged from a hospital (which was not approved as a Medicare liver transplant facility) in which he or she received a liver transplant, medical and hospital services required as a result of the non-covered transplant will be covered in a facility otherwise eligible for Medicare payment if the services are reasonable and necessary in all other respects. Thus, coverage will be provided for subsequent inpatient stays or outpatient treatment ordinarily covered by Medicare even if the need for treatment arose because of a previous non-covered liver transplant procedure. These services also will be covered for Medicare beneficiaries who were not beneficiaries at the time they received a liver transplant regardless of whether or not the transplant was performed at an approved facility.

Once a facility applies for approval and is approved as a liver transplant facility for Medicare purposes, it is obliged to report immediately to HCFA any events or changes that would affect its approved status. Specifically, a facility must report any significant decrease in the number of liver transplants performed or survival rates, the transplantation of patients who do not meet its patient selection criteria, the loss of key members of the transplant team, or any other changes that could affect the performance of liver transplants at the facility. Changes from the terms of approval may lead to withdrawal of approval for Medicare coverage of liver transplants performed at the facility.

A. Requirements for Coverage

1. *Specific clinical conditions required for liver transplantation coverage.* Medicare coverage of liver transplants in adults will only be made for those beneficiaries who meet the applicable criteria and who are diagnosed as having one of the following clinical conditions:

a. Primary biliary cirrhosis;

b. Primary sclerosing cholangitis;

c. Postnecrotic cirrhosis, hepatitis B surface antigen negative;

d. Alcoholic cirrhosis;

e. Alpha-1 antitrypsin deficiency disease;

f. Wilson's disease; or

g. Primary hemochromatosis.

2. *Other coverage criteria.* Facilities must have written patient selection criteria for determining suitable candidates for liver transplants. When specific criteria are considered in connection with the assessment of an individual patient's suitability for a liver transplant, we believe that liver transplants are medically reasonable and necessary. Therefore, we have developed patient selection guidelines (contained in section V.E. of this notice) that are a subset of the criteria that facilities are required to meet so that we may be assured of their qualifications to provide medically reasonable and necessary liver transplants to Medicare patients.

B. Facility Requirements

The criteria that we will require facilities to meet in order to receive Medicare payment for liver transplantations follow.

1. *Patient selection.* A facility must have adequate written patient selection criteria and an implementation plan for their application.

2. *Patient management.* A facility must have adequate patient management plans and protocols that include the following:

a. Therapeutic and evaluative procedures for the acute and long-term management of a patient, including management of commonly encountered complications. The basis for confidence in these plans must be stated.

b. Patient management and evaluation during the waiting and immediate post-discharge, as well as in-hospital, phases of the program.

c. Long-term management and evaluation, including education of the patient, liaison with the patient's attending physician, and the maintenance of active patient records for a period of at least 5 years.

3. *Commitment.* A facility must make a sufficient commitment of resources and planning to the liver transplant program to carry through its application. Indications of this commitment could include the following:

a. Commitment of the facility to the liver transplant program is at all levels and broadly evident throughout the facility. (A liver transplantation program requires a major commitment of resources. They may intermittently include many other departments as well as the principal sponsoring departments.)

b. The facility has expertise in the following areas: Medical, surgical, and other relevant areas, particularly hepatology, vascular surgery, anesthesiology, immunology, infectious diseases, pulmonary diseases, pathology, radiology, nursing, blood banking, and social services. The facility must identify individuals in these areas in order to achieve an identifiable and stable transplant team. Responsible medical/surgical members of the team must be board certified or eligible to take the boards in their respective disciplines or have, in the opinion of the non-Federal experts (discussed in V.C. of this notice) demonstrated competence irrespective of board status.

(1) The component teams must be integrated into a comprehensive team with clearly defined leadership and corresponding responsibility.

(2) The anesthesia service must identify a team for transplantation that must be available at all times.

(3) The infectious disease service must have both the professional skills and laboratory resources needed to discover, identify, and manage the complications from a whole range of organisms, many of which are not commonly encountered.

(4) The nursing service must identify a team or teams trained not only in hemodynamic support of the patient, but also in the special problems of managing immunosuppressed patients.

(5) Pathology resources must be available for studying and reporting promptly the pathological responses to transplantation.

(6) Adequate social service resources must be available.

(7) Mechanisms must be in place for managing the liver transplant program that assure that—

(A) Patient selection criteria are consistent with those set forth in the facility's written patient selection criteria.

(B) The facility is responsible for the ethical and medical considerations involved in the patient selection process and application of patient selection criteria.

(8) Adequate plans exist for organ procurement meeting legal and ethical criteria, as well as yielding viable transplantable organs in reasonable numbers.

4. *Facility plans.* The facility must have overall facility plans, commitments, and resources for a program that will ensure a reasonable concentration of experience; specifically, 12 or more liver transplantation cases per year in adults who have one or more of the covered conditions. This level of activity must be shown feasible and likely on the basis of plans, commitments, and resources.

5. *Experience and survival rates.* The facility must demonstrate experience and success with clinical organ transplantation.

The facility must have an established liver transplantation program with documented evidence of 12 or more adult patients, who have one or more of the covered conditions, in each of the two preceding 12-month periods.

Initially, the facility must demonstrate an actuarial 1-year survival rate of 77 percent and an actuarial 2-year survival rate of 60 percent for adult patients who have one of the seven covered conditions and who have had liver transplants at that facility during the time the facility is calculating its experience and survival rates. In reporting their actuarial survival rates, facilities must use the Kaplan-Meier technique and must report both 1-year and 2-year survival rates. The following definitions and rules also must be used:

a. The date of transplantation (or, if more than one transplantation is performed, the date of the first transplantation) must be the starting date for calculation of the survival rate.

b. For those dead, the date of death is used, if known. If the date of death is unknown, it must be assumed as 1 day after the date of the last ascertained survival.

c. For those who have been ascertained as surviving within 60 days before the fiducial date (the point in time when the facility's survival rates are calculated and its experience is reported), survival is considered to be the date of the last ascertained survival, except for patients described in paragraph (e) below.

Note: The fiducial date cannot be in the future; it must be within 90 days before the date we receive the application.

d. Any patient who is not known to be dead but whose survival cannot be ascertained to a date that is within 60 days before the fiducial date, must be considered as "lost to followup" for the purposes of this analysis.

e. Any patient transplanted between 61 and 120 days before the fiducial date must be considered as "lost to followup" if he or she is not known to be dead and his or her survival has not been ascertained for at least 60 days before the fiducial date. Any patient transplanted within 60 days before the fiducial date must be considered as "lost to followup" if he or she is not known to be dead and his or her survival has not been ascertained on the fiducial date.

f. A facility must submit its survival analyses using the assumption that each patient in the "lost to followup" category died 1 day after the last date of ascertained survival. However, a facility may submit additional analyses that reflect each patient in the "lost to followup" category as alive at the date of the last ascertained survival.

In addition to reporting actuarial survival rates, the facility must submit the following actual information on every Medicare and non-Medicare patient who received a liver transplant for one of the seven covered indications between January 1, 1982 and the date of the application:

- Transplant number.
- Age.
- Sex.
- Date of transplant.
- Clinical indication for transplant.
- Date of most recent ascertained survival.
- Date of death.
- The category of each patient (that is, living, dead, or "lost to followup" according to the criteria B.5.d or e above.

Unique patient identifiers are not needed for data prior to the application. The facility may submit additional information on any of the cases that it would like considered in the review.

Although we are not requiring that these data be submitted in a particular format, our review will be facilitated if the data are submitted as follows:

- Data are tabulated in seven columns, with data for each patient appearing as one line and listed in the sequence of date of transplant.
- The fiducial date should appear on each page.
- The transplant numbers listed may be existing liver transplant numbers used by the applicant facility. If so, the basis for any missing numbers should be explained.
- The tabulation should include no more than these required data. If more data are provided, they should be provided through additional tables or supplemental explanation.

g. In addition to the data above on the individual patient, the facility must submit its retransplantation rate per year for the last 2 years for all transplants.

6. *Maintenance of data.* The facility must agree to maintain and, when

requested, periodically submit data to HCFA, in standard format, about patients selected (including patient identifiers), protocols used, and short- and long-term outcome on all patients who undergo liver transplantation, not only those for whom payment under Medicare is sought. (Such data are necessary to provide a data base for an ongoing assessment of liver transplantation and to ensure that approved facilities maintain appropriate patient selection criteria, adequate experience levels and satisfactory patient outcomes.) In addition, facilities must agree to notify HCFA immediately of any change related to the facility's transplant program (including turnover of key staff members) that could affect the health or safety of patients selected for covered Medicare liver transplants or that would otherwise alter specific elements in their application. For example, a facility must report any significant decrease in its experience level or survival rates, the loss of key members of the transplant team, the transplantation of patients who do not meet the facility's patient selection criteria, or any other changes that could affect the performance of liver transplants at the facility. Changes from the terms of approval may lead to withdrawal of approval for Medicare coverage of liver transplants performed at the facility.

Facilities not approved for Medicare covered liver transplants are not required to maintain data in standard format. However, if these facilities apply for Medicare approval, they will be required to submit such data for all patients receiving a liver transplant. The facility must submit these data beginning 30 days after notification of the data requirements. We plan to issue instructions in the near future to all hospitals regarding the required data.

7. *Organ procurement.* The facility must be a member of the Organ Procurement and Transplantation Network (OPTN) as a liver transplant center and abide by its approved rules. The OPTN is currently administered under a HHS contract by the United Network for Organ Sharing. However, to date, the Secretary has approved no rules binding upon Medicare and Medicaid participants. The facility must have an agreement with a designated organ procurement organization to obtain donor organs.

a. If a liver transplantation center uses the services of an outside organ procurement organization to obtain donor organs, it must have a written arrangement covering these services. The liver transplantation program must notify the Secretary in writing within 30 days of terminating such arrangements.

b. "Organ procurement organization" is defined as an organization that has been designated by HCFA as an organ procurement organization and that meets the criteria in section 371(b) of the Public Health Service Act, 42 U.S.C. 273(b). Such an agency performs or coordinates all of the following services:

(1) Retrieval of donated livers;

(2) Preservation of donated livers;

(3) Transportation of donated livers; and

(4) Maintenance of a system to locate prospective recipients for retrieved organs.

8. *Laboratory services.* The facility must make available, directly or under arrangements, laboratory services (including blood banking) to meet the needs of patients. Laboratory services are performed in a laboratory facility approved for participation in the Medicare program.

9. *Billing.* The facility must agree to submit claims to Medicare only for adult liver transplants performed on individuals who have been diagnosed as having one of the following conditions:

a. Primary biliary cirrhosis;

b. Primary sclerosing cholangitis;

c. Postnecrotic cirrhosis, hepatitis B surface antigen negative;

d. Alcoholic cirrhosis;

e. Alpha-1 antitrypsin deficiency disease;

f. Wilson's disease; or

g. Primary hemochromatosis.

C. Process for Review and Approval of Facilities

Facilities that wish to obtain liver transplantation coverage for their Medicare patients are required to submit an application and supply documentation showing their initial and ongoing compliance with each of the criteria. We will reexamine the use of the criteria in 3 years to verify its continuing appropriateness.

The approval of facilities will be based on a review of the materials submitted regarding their experience and expertise, as well as their commitment to the liver transplant program. We will conduct the reveiw with the aid and advice of non-Federal experts in relevant fields. Generally, the consultants will have the responsibility of reviewing applications at the request of HCFA, making recommendations to HCFA on a timely basis concerning qualified facilities, and supporting each recommendation with written documentation. Consensus of the consultants will not be required. The individual consultants will report to us on their findings with respect to individual applications and will provide the basis for decisions as to the approval or disapproval of such applications.

In approving facilities, we will compare the facility's submission against the criteria specified in this notice. The approval granted will be for a 3-year period and extensions of approval will require submission of a continuation application and will not be automatic.

In addition to reviewing applications, the individual expert consultants may propose specific changes to the coverage criteria. Finally, in certain limited cases, exceptions to the strict criteria may be warranted if there is justification and if the facility ensures our objectives of safety and efficacy. Under no circumstances will exceptions be made for facilities whose transplant programs have been in existence for less than 2 years. This means that the 2-year period begins on the first day a facility actually performs an adult human orthotopic liver transplant. Also, applications from consortia will not be approved. In these two cases, disapprovals will be made by HCFA and will not require prior reviews by the expert consultants. Additionally, exceptions will not be granted on the basis of geographic considerations.

D. Application Procedure

The application procedure is as follows:

1. An original and 10 copies of the application must be submitted on 8½ by 11 inch paper, signed by a person authorized to do so. The facility must be a participating hospital under Medicare and must specify its provider number, the name and title of its chief executive officer, and the name and telephone number of an individual we could contact should we have questions regarding the application.

2. Information and data must be clearly stated, well organized, and appropriately indexed to aid in review against the criteria specified in this notice. Each page must be numbered.

3. To the extent possible, the application should be organized into nine sections corresponding to each of the nine major criteria and addressing, in order, each of the sub-criteria identified.

4. The application should be mailed to the address below in a manner which provides the facility with documentation that it was received by us.

Administrator, Health Care Financing Administration, c/o Office of Executive Operations, room 777, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

E. Guidelines for Patient Selection Criteria

Included in section V.B., Facility Requirements, is the requirement that facilities must have adequate patient selection criteria and an implementation plan for their application. Section V.A., Requirements for Coverage, also requires that facilities have patient selection criteria that they will follow in determining suitable candidates for liver transplants. Such criteria should include or be comparable to, but need not be limited to, the following:

1. Patient selection criteria must be based upon both a critical medical need for transplantation and a maximum likelihood of successful clinical outcome.

2. The patient must have end-stage liver disease with a life expectancy of less than 12 months and no medical or surgical alternatives to transplantation.

3. In the case of alcoholic cirrhosis, selection of a patient who needs a liver transplant should include evidence of sufficient social support to assure assistance in alcohol rehabilitation and in immunosuppressive therapy following the operation. Although the center should require abstinence at the time of the operation, we do not specify how long the patient should be abstinent prior to the operation. We believe the hospital and the transplant team should establish such guidelines. Facilities will be required to submit, as part of their application, the period of time they require for abstinence in patients with end-stage liver disease due to alcoholic cirrhosis.

4. The patient must not have the following:

a. Significant or advanced cardiac, pulmonary, renal, nervous system, or other systemic disease.

b. Systemic infection.

c. Presence of malignancies either hepatic, extrahepatic, or metastatic.

d. Acute severe hemodynamic compromise at the time of transplantation if accompanied by compromise or failure of one or more vital organs.

e. Active alcohol or drug abuse.

f. The need for prior transplantation of a second organ, such as lung, heart, or kidney, or marrow, if this represents the coexistence of significant disease.

g. A history of a behavior pattern or psychiatric illness considered likely to interfere significantly with compliance with a disciplined medical regimen (because a lifelong medical regimen is necessary, requiring multiple drugs several times a day, with serious consequences in the event of their interruption or excessive consumption).

5. Many other factors must be recognized with regard to an adverse outcome after liver transplantation. The manner and extent to which adverse risk is translated into contraindication varies. For example, presence of insulin-dependent diabetes mellitus may have to be considered in relation to transplantation because of possible adverse effects on outcome as well as complications related to chronic immunosuppressive therapy.

6. Plans for long-term adherence to a disciplined medical regimen must be feasible and realistic for the individual patient.

These criteria take into consideration advances in the transplantation field and reflect discussions with experts in hepatology, infectious diseases, transplantation, surgery, and biostatistics, and other experts. We realize that the indicators to measure the safety and efficacy of liver transplantations will continue to evolve. Thus, the criteria may need to be updated periodically to recognize further developments in liver transplantation technology.

VI. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all facilities that consider themselves capable of performing liver transplants are treated as small entities. In this impact analysis, any reference to liver transplant/transplantation will mean liver transplantation in adults (age 18 or older). Liver transplantation to treat children (individuals under the age of 18) with extrahepatic biliary atresia was previously approved for Medicare coverage.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final notice that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis also must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As stated in the initial impact analysis, this final notice is considered a major rule under E.O. 12291 criteria based on our cost projections for the next five fiscal years (FYs). Additionally, this final notice will affect all facilities that consider themselves capable of performing liver transplants and may have an effect on the ability of those facilities to compete. We believe this final notice will not have a significant economic impact on a substantial number of small rural hospitals since it is unlikely that they will be performing liver transplants. However if there are any small rural hospitals performing liver transplants, they will be affected by this final notice in the same way as any other hospital. We have revised and amended certain provisions of the proposed notice in this final notice based on response to public comment. However, these revisions will not have a significant economic impact on beneficiaries or hospitals. All comments, even those concerning this regulatory impact analysis, have been addressed in the preamble. The following analysis, which, in combination with the other sections of this final notice, is intended to conform to the objectives of E.O. 12291, the RFA, and section 1102(b) of the Act.

B. Entities Affected

In the initial impact analysis, we stated that the criteria that we have developed are essential to the maintenance of high standards of quality and the most successful outcomes. There are currently 73 liver transplant facilities in the United States according to information from the United Network for Organ Sharing. We estimate that the application of these criteria will result in the approval initially of about 10 of these facilities with a total of approximately 20 a year later. These estimates are being used primarily for the purpose of estimating the costs of covering liver transplants. We do not have any advance

information on which facilities will apply or meet the criteria.

In the initial impact analysis, we estimated that there would be, at most, 74 covered Medicare liver transplant cases for FY 1990. Based upon the later effective date of March 8, 1990, we now estimate 37 covered Medicare liver transplant cases for FY 1990. By contrast, the number of non-Medicare cases for the same period is expected to be over 1500 cases. Thus, Medicare's share of the total liver transplant market for FY 1990 is expected to be only about 2.5 percent, rather than the 4.7 percent originally projected. However, by FY 1994, we expect that 19 percent of all liver transplants will be Medicare covered. Initially, we estimate that 10 hospitals out of the 73 hospitals currently performing liver transplants will meet the Medicare coverage criteria. However, by FY 1994, we expect that many, if not most, of the hospitals performing liver transplants will meet the criteria. A hospital that performs liver transplants but does not meet our Medicare coverage criteria could eventually be disadvantaged to the extent that the hospital performs liver transplants for Medicare beneficiaries and to the extent that the hospital must compete with nearby hospitals that meet Medicare coverage criteria for liver transplants.

Consequently, this final notice could eventually provide those hospitals that meet the criteria for performing liver transplants with a significant amount of additional Medicare revenue. Also, these hospitals could use their status as Medicare liver transplant centers to enhance their prestige and standing as health care providers. This, in turn, could enable them to increase their overall market share of liver transplants at the expense of hospitals that also perform liver transplants but do not meet our criteria. Those facilities that do not meet the criteria may view this final notice as having a significant adverse effect on competition. It is important to emphasize, however, that since the market for liver transplants is constrained by the number of livers available for transplant, we do not believe that the criteria will in any way reduce the number of transplants.

Many facilities that have performed at least one liver transplant will not meet the levels of experience and success required under the facility criteria that we are proposing. However, some might be found to have acceptable clinical programs with an adequate prospect for successful outcomes. We encourage these facilities to apply when they have achieved that success. We expect that Medicare coverage of liver transplantation could prompt additional third party payers, including State Medicaid plans, to cover this procedure and create incentives for some facilities to establish liver transplant programs. However, third party payers that either already cover or will cover liver transplants are not required to adopt our coverage standards.

Nonetheless, should most or all third party payers eventually adopt our policy, it may, indeed, adversely affect those facilities that fail to meet the criteria. Yet, we must point out that we have no authority to regulate coverage of liver transplants by private insurers or to limit any decision they may make to adopt policies similar to our own. If such a result were to occur, we believe it will merely reflect a general consensus that might have formed even if we had not addressed this issue.

Due to the sensitivity of these estimates and the uncertainty of actual outcomes, we view our estimates of the number of liver transplant cases and the number of hospitals that will meet Medicare coverage criteria as opinions, rather than estimates.

C. Impact on Beneficiaries

In the initial impact analysis, we pointed out that it is likely that few beneficiaries entitled to Medicare on the basis of age will be suitable liver transplant recipients because the advanced age of these beneficiaries will generally make them poor medical candidates for this procedure. Beneficiaries entitled to Medicare on the basis of disability are required by law to serve a 24-month waiting period in addition to the 5 months they must have been disabled prior to entitlement to disability cash benefits. We recognize that the need for liver transplantation among some of those disabled by liver disease may arise earlier than the twenty-nine months that they must wait until they are entitled to Medicare.

We believe that the criteria we are implementing are the most effective means available to ensure that the liver transplants that are made available to Medicare beneficiaries are provided in a safe and effective manner so that they can be considered to be reasonable and necessary within the meaning of the law. Although we have made some changes to the criteria in response to public comments, we recognize that the criteria are still fairly restrictive. Beneficiaries may have to travel long distances from their homes and have to incur travel expenses in order to receive a liver transplant at a Medicare approved facility. However, we believe this approach is justified, considering both our concerns for patient safety and the success rates that are currently achievable with this modality. Furthermore, we believe the benefit of affording beneficiaries the opportunity of undergoing this type of procedure with a very reasonable assurance of a successful outcome must be weighed against the possibility of somewhat higher personal expenses. In any event, we do not believe that the criteria will have an effect on the number of liver transplants performed.

D. Projected Expenditures Under Medicare

In the initial impact analysis, we discussed in some detail the difficulties of estimating the cost of covering liver transplants. The major problem was in estimating the availability of donor organs over the next few years. Our projected estimates were based on coverage becoming effective February 1, 1990. We made assumptions about the total number of liver transplants performed nationwide and the future rate of increase of the number of transplants performed at approved facilities. We assumed that the number of transplants would go up with the number of facilities, but the rate of increase would level off due to competition for suitable recipients and donor organs.

The only change we are making in our final cost projection is to reflect the March 8, 1990 effective date for liver transplant coverage. As a result, we are lowering the Medicare cost estimate for FY 1990 to $5 million. The following table presents estimates in the growth of Medicare expenditures for coverage of liver transplants through FY 1994.

Again, due to the sensitivity of these assumptions and the uncertainty of actual outcomes, we view our projection of expenditure increases as an opinion, rather than an estimate.

PROJECTED EXPENDITURES FOR MEDICARE COVERAGE OF LIVER TRANSPLANTS

[In Millions] *

Fiscal year				
1990	1991	1992	1993	1994
$5	$25	$55	$85	$120

* Rounded to nearest $5 million.

E. Projected Savings Under Medicaid

In the initial impact analysis, we recognized that changes in Medicare coverage of liver transplants would affect Medicaid. Presently 35 States and

the District of Columbia cover liver transplants. Medicare coverage of liver transplants will mean that if the transplant qualifies for Medicare coverage, these States will only be required to pay the coinsurance and deductible for the transplant. There are no changes in the Medicaid savings projected for this final notice. In FY 1990 and 1991, we estimate the total Medicaid savings to be considerably less than $5 million. However, by FY 1992, we expect to see a noticeable increase in Medicaid savings because the number of approved Medicare liver transplant facilities and transplant operations is expected to increase substantially.

PROJECTED SAVINGS IN MEDICAID LIVER TRANSPLANT EXPENDITURES

[In Millions] *

Fiscal year				
1990	1991	1992	1993	1994
0	0	$5	$5	$5

* Rounded to nearest $5 million

F. Alternatives Considered

In the initial impact analysis, we considered the alternative of allowing all Medicare participating hospitals to establish transplant programs without additional facility criteria, although the patient selection criteria would have to be used. We continue to reject this alternative because it would permit uncontrolled proliferation of transplant facilities, raising all the concomitant questions about the quality of services, given the limited availability of donor organs and experienced teams. Further, because the procedure would have been spread among a larger number of facilities, it would be likely that the average experience level would be lower and would probably result in lower success and survival rates among recipients. Our responsibilities for the well-being of Medicare beneficiaries and for the prudent expenditure of Medicare trust funds dictate that we pursue a cautious policy with respect to a procedure as complex as liver transplantation.

G. Conclusion

We believe that the conditions set forth in this final notice will maintain the quality of the services required by this complex procedure, permit transplantation only at facilities and under conditions which have been shown to be safe and effective, and allow entry of new qualified providers. Although the criteria for experience, survival rates and facility commitment are somewhat demanding, we believe this approach is justified, particularly in view of the typical relationship between experience and quality of service.

VII. Waiver of 30-Day Delay in Effective Date

In the proposed notice published on March 8, 1990, we proposed to permit coverage of adult liver transplants as early as the date of publication of the proposed notice (that is, March 8, 1990). If a facility applies within 90 days of the date of publication of this notice and is accepted on the basis of that application, coverage may be effective as early as March 8, 1990 (the date of the proposed notice) or the date upon which the facility is found to have met the conditions, whichever occurred later. Coverage for liver transplants performed at a facility applying after the 90-day timeframe will begin on the date we approve its application.

VIII. Paperwork Burden

This notice contains information collection requirements that are subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Specifically, facilities that wish to obtain approval for Medicare coverage of liver transplantation are required to submit an application and documentation pertinent to liver transplantations. Public reporting burden for this collection of information is expected to be 100 hours.

A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron, HCFA Desk Officer.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program)

Authority: Sec. 1102, 1862(a)(1) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y(a)(1) and 1395hh).

Dated: January 14, 1991.

Gail Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 26, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-8608 Filed 4-11-91; 8:45 am]

BILLING CODE 4120-01-M

federal register

Friday
April 12, 1991

Part IV

Environmental Protection Agency

40 CFR Parts 261, 268, and 271
Land Disposal Restrictions for Electric Arc Furnace Dust (K061); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 268, and 271

(FRL-3909-8)

Land Disposal Restrictions for Electric Arc Furnace Dust (K061)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing treatment standards under the land disposal restrictions program for wastes identified as K061 (electric arc furnace dust) that are nonwastewaters and contain equal to or greater than 15% total zinc (i.e., high zinc subcategory), determined at the point of initial generation. In the First Third rule (53 FR 31162, August 17, 1988), EPA determined that high temperature metals recovery (HTMR) represents the Best Demonstrated Available Technology (BDAT) for these wastes, but established a treatment standard of "no land disposal" based upon the Agency's belief that it lacked authority to regulate the slag residues from the HTMR process as K061 wastes. In a June 26, 1990 decision, the District of Columbia Circuit Court of Appeals (*API* v. *EPA*, 906 F.2d 729 (D.C. Cir. 1990)) invalidated the treatment standard of "no land disposal" and held that EPA is not jurisdictionally barred from promulgating a treatment standard for the slag. The court remanded the case to EPA to determine whether to establish a treatment standard for slag residue from HTMR; the Court did not dispute that HTMR represents BDAT for these wastes. Today's action proposes treatment standards for K061 nonwastewaters in the high zinc subcategory based on the analysis of nonwastewater residues from HTMR processes. The Agency is also proposing to delist HTMR nonwastewater residues, such as slag, if they satisfy certain conditions, provided they do not exhibit one or more of the hazardous waste characteristics.

DATE: Comments on this proposed rule must be submitted on or before (May 13, 1991). Because of the pending lapse of the existing treatment standard, the Agency will not be able to extend the comment period.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket F-91-K61P-FFFF, room 2427, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. Its phone number is (202) 475-9327. An appointment must be made to examine the docket.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 (toll free), (703) 920-9810 locally. For general information on the proposed rule, contact Robert Burchard, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (703) 308-8434. For information on the proposed BDAT treatment standard, contact Laura Lopez, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (703) 308-8434.

SUPPLEMENTARY INFORMATION:

Outline

1. Background

A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, prohibit the land disposal of untreated hazardous wastes. HSWA requires the Agency to set "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet the treatment standards established by EPA are not prohibited and may be land disposed. In addition, a hazardous waste that does not meet the treatment standard may be land disposed provided the "no migration" demonstration specified in RCRA section 3004(d)(1), (e)(1) and (g)(5) is made. (See 55 FR 22526 for a more detailed discussion of the no migration demonstration.)

For the purposes of the restrictions, HSWA defines land disposal to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave (RCRA section 3004(k), 42 U.S.C. 6924(k)). HSWA also defines land disposal to include underground injection wells; therefore, disposal of hazardous wastes in injection wells is subject to the land disposal restrictions.

The land disposal restrictions are effective when promulgated, unless the Administrator grants a national capacity variance from the otherwise-applicable date and establishes a different date (not to exceed two years) based on "* * * the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted. (See 55 FR 22526 for a more detailed discussion on national capacity and case-by-case extensions.)

In addition to prohibiting the land disposal of hazardous wastes, Congress prohibited storage of any waste which is prohibited from land disposal unless "* * * such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j)).

B. Proposed Rule

Today's notice proposes treatment standards for K061 nonwastewaters in the high zinc subcategory, i.e., those wastes containing equal to or greater than 15% total zinc, at the point of initial generation. (K061 wastes are defined in 40 CFR 261.32 as "Emission control dust/sludge from the primary production of steel in electric furnaces".) Wastes in this subcategory currently are subject to an interim standard based upon the performance of stabilization. However, the interim standard will lapse on

August 8, 1991, at which time the waste may no longer be land disposed unless a treatment standard is in place.

The Agency is proposing to establish concentration-based treatment standards for K061 nonwastewaters in the high zinc subcategory based on the analysis of nonwastewater residues from the HTMR processes. (While these residues have been commonly referred to as slag, there is some question whether all nonwastewater residues from HTMR processes are technically defined as slag. Slag is generally considered a residue from a thermal process in which metals have been in a molten mixture. Since this does not necessarily occur in all HTMR processes, the nonwastewater residues would not technically be slags.) The Agency is further proposing that the nonwastewater residues from the HTMR process be delisted from the hazardous waste regulations if they satisfy certain conditions. Moreover, the Agency is proposing to establish concentration-based treatment standards for K061 nonwastewaters that are not only high in zinc, but also high in nickel and/or chromium (i.e., containing greater than 1.5% total chromium and nickel at the point of initial generation). Since these wastes are typically recovered for their chromium/nickel content rather than their zinc content, and since the residuals from this recovery process are expected to achieve a different level of performance for chromium and nickel, the Agency is also proposing to establish an additional subcategory of high zinc K061 nonwastewaters, and to propose treatment standards for it. This subcategory would consist of high zinc K061 nonwastewaters that contain greater than or equal to 1.5% total nickel and chromium. EPA is proposing to reserve the concentration-based treatment standards for nickel and chromium in this subcategory; additional data on the performance of this technology are currently being gathered and treatment standards for nickel and chromium may, thus, be developed.

II. Detailed Discussion of Proposed Rule

A. History of K061 Treatment Standards

EPA first promulgated treatment standards for nonwastewater forms of K061 as part of the First Third final regulation on August 8, 1988 (53 FR 31162–31164, August 17, 1988). The Agency defined two subcategories for nonwastewater forms of K061: the low zinc subcategory (less than 15% total zinc) and the high zinc subcategory (equal to or greater than 15% total zinc). The treatment standard for the low zinc subcategory was based on the performance of stabilization. For the high zinc subcategory, the final standard was expressed as "no land disposal" based on the determination that high temperature metals recovery represents BDAT (53 FR 31221). Due to a shortage in high temperature metals recovery capacity, an interim numerical standard based on the performance of stabilization was established until August 1990.

In the proposed Third Third rule (54 FR 48456–48457), the Agency requested comments on extending the existing interim standard of stabilization for another year. The Agency had information indicating that while there was insufficient high temperature metals recovery capacity at the time of proposal, industry was developing this treatment capacity. Because of the capacity shortage, the Agency decided to extend the interim standard for one additional year.

The Agency also proposed in the Third Third rule to amend the existing treatment standard for the high zinc subcategory K061 wastes to be resmelting in high temperature metal recovery furnace. However, EPA decided not to amend the existing standard in the final rule, as the metals recovery standard was under review by a panel of the District of Columbia Circuit Court of Appeals (*API* v. *EPA*, No. 88–1606). In a June 26, 1990 decision, the Court remanded the issue to EPA for further consideration.

Although EPA determined in the First Third rulemaking that high temperature metals recovery was BDAT for treating high zinc K061 hazardous wastes, the Agency concluded that it probably lacked the authority to establish any treatment standards for the slag residues resulting from the metals reclamation process. As the Agency explained in the First Third proposed rule, the furnaces used for metals reclamation "are normally * * * essential components of industrial processes, and when they are actually burning secondary materials for material recovery can be involved in the very act of production, an activity normally beyond the Agency's RCRA authority." (53 FR at 11753.) Consequently, the Agency did not consider the K061 to be a "solid waste" within the meaning of RCRA subtitle C once it entered a reclamation furnace where it functioned as, and was similar to, ordinary raw materials customarily processed in the industrial furnace. Slag derived from the reclamation process would not be derived from treating a hazardous waste, and therefore the slag would not be hazardous by virtue of the derived-from-rule. For purposes of the land disposal restrictions program, therefore, the slag would not be covered by the prohibition for K061 waste. The treatment standard of "no land disposal" reflected EPA's belief that residues from HTMR no longer carry the K061 waste code, so that no K061 waste is being disposed.

In its June 1990 decision, the Court found it equally plausible that the K061 remained discarded throughout the waste treatment process and that slag residues from the process could still be classified as K061 (906 F.2d at 740–741). According to the Court, the delivery of K061 waste to a metals reclamation facility is part of a mandatory waste treatment plan specified by EPA, and that EPA can still consider it a solid waste under RCRA. *Id.* Therefore, the Court held that EPA must reconsider its basis for declining to establish a treatment standards for K061 slag. Unless and until the Agency should issue a different interpretation, the slag remains classified as a K061 hazardous waste by virtue of the derived-from-rule. *Id.* and 56 FR at 7144 (Feb. 21, 1991).

In this proposal, the Agency is not dealing with the complicated issues of when secondary material might or might not be solid wastes. EPA prefers to address this issue in a comprehensive fashion. In this proceeding, EPA is acting to close the prospective regulatory gap created by the absence of a treatment standard for nonwastewater residues from processing K061 wastes in the high zinc subcategory which could occur when the interim standard lapses in August, 1991.

B. Proposed Treatment Standards for K061 Nonwastewaters in the High Zinc Subcategory

1. Background on the Development of HTMR as BDAT

In the Land Disposal Restrictions final rule for First Third wastes (53 FR at 31162 (August 17, 1988)), EPA determined that zinc could be recovered on a routine basis from K061 wastes containing equal to or greater than 15% total zinc utilizing a technology identified as high temperature metal recovery (HTMR). Several HTMR systems exist including rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, and rotary hearth furnace/electric furnance combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (12)). Although HTMR technologies can recover zinc from some K061 wastes containing less than 15% total zinc, EPA

determined that the 15% level represented a reasonable cutoff concentration for the routine recovery of zinc. Therefore, EPA established this level as the cutoff concentration for distinguishing between two subcategories for K061 wastes identified simply as the high zinc subcategory and the low zinc subcategory.

EPA also determined that pozzolanic or cementitious stabilization was an applicable treatment technology that could achieve a reduction in the mobility of the metal constituents in K061 wastes. In fact, EPA determined that these stabilization processes represent the Best Demonstrated Available Technology (BDAT) for K061 wastes in the low zinc subcategory and promulgated concentration-based treatment standards for wastes in this subcategory. While these stabilization processes are also technically applicable to wastes in the high zinc subcategory, EPA determined that HTMR represented BDAT for these wastes. In the June 26, 1990 decision, the Court did not dispute that HTMR represents BDAT for these wastes.

2. Proposed Concentration-based Standards for K061 High Zinc Subcategory

For the First Third rule, EPA has two sets of TCLP data on the nonwastewater residues resulting from two different HTMR processes that were recovering zinc from K061 wastes in the high zinc subcategory. At that time, EPA chose not to establish concentration-based treatment standards based on these data. One of these HTMR processes consists of a series of Waelz kilns (a Waelz kiln is a type of rotary kiln), while the other was a plasma arc furnace.

In September, 1990, additional TCLP data on residues from the recovery of zinc from K061 wastes in the high zinc subcategory (low in nickel and chromium) were submitted to the Agency by Horsehead Resource Development Company (HRD). This system uses a series of Waelz kilns, generating an iron-rich residue and a crude zinc oxide residue from the first kiln. The iron-rich nonwastewater residue (which EPA referred to as slag in the First Third rule) has been typically used as road aggregate, and the crude zinc oxide is sent to a second kiln for further separation and refining.

Based on the TCLP data from HRD for these iron-rich residues and the two sets of TCLP data submitted for the First Third rule, the Agency developed the concentration-based treatment standards that are proposed today. While the Agency previously regulated only four metals in stabilized K061 wastes, the Agency reconsidered its selection and number of regulated metals in today's proposed standards; therefore, standards have been developed for 14 BDAT list metal constituents. In HTMR processes, the partitioning of metals into products and/or residues is highly dependent, at least in part, upon parameters such as the operating temperature of the various heat zones, composition of metals and other elements in the feed, zone residence times, flow rates and oxidation/reduction conditions. There also appears to be an inherent metallurgical interdependency between certain metals, based on their atomic structure. Such things have led the Agency to the preliminary conclusion that all nonhazardous as well as hazardous metal-bearing materials placed into the HTMR processes could affect the ultimate composition and leachability of metals from the HTMR nonwastewater residues. Thus, Agency is proposing to regulate 14 BDAT list metals as a means of helping to ensure that the HTMR processes, when used to treat K061 wastes, are well-designed and well-operated (i.e., Truly BDAT) with due consideration of all feed materials. (EPA is proposing a treatment standard for zinc even though zinc is not listed on appendix VIII, to ensure proper process operation. Since zinc is the principal metal being recovered, the treatment standard should maximize zinc recovery and hence process efficiency and residue immobility.) Furthermore, the regualtion of these metals under BDAT provides a means of simplifying the delisting of these residues. According to RCRA section 3001(f), in order to delist a waste, it must be demonstrated that the waste is no longer hazardous based on examination of all toxic constituents that might reasonably be expected to be present in the waste. See section II.C. of today's proposed rule for a further discussion on the proposed delisting of K061 nonwastewater residues from HTMR processes.

The Agency is specifically soliciting comment on the relationship of the above issues to the regulation of all 14 metal constituents, including the regulation of 14 metal constituents rather than the four. In addition, the Agency is soliciting data on the leachability of all toxic metals from nonwastewaters residues generated by high temperature metal recovery of K061 nonwastewaters in the high zinc subcategory.

PROPOSED BDAT TREATMENT STANDARDS FOR K061

[Nonwastewaters—High Zinc Subcategory with less than 1.5% chromium/nickel combination]

Regulated constituent	Maximum for any single composite sample, TCLP (mg/l)
Antimony	1.0
Arsenic	0.028
Barium	4.9
Beryllium	0.0031
Cadmium	0.027
Chromium (Total)	0.065
Lead	0.37
Mercury	0.0031
Nickel	0.16
Selenium	0.29
Silver	0.15
Thallium	0.029
Vanadium	0.10
Zinc	0.23

3. Reservation of Nickel and Chromium Standards for K061 Wastes Containing High Zinc and High Chromium/Nickel

Most of the high zinc subcategory K061 wastes are generated from the manufacturing of carbon steel and contain low concentrations of chromium and nickel. However, certain K061 wastes generated from stainless and specialty steel manufacturing, besides having a high zinc content, may also contain recoverable levels of chromium and nickel. The Agency is soliciting comment on the possibility of establishing standards for K061 based on its origin, rather than its metal content (e.g., K061 generated from carbon steel manufacturing, K061 generated from stainless steel manufacturing, K061 generated from specialty steel manufacturing, etc.).

Information submitted to EPA after promulgation of the First Third rule indicates that K061 nonwastewaters (regardless of their zinc content) containing equal to or greater than 1.5% total nickel and chromium in combination can be used to produce a remelt alloy containing nickel, chromium, and iron that can be used as a feedstock for stainless steel production. When using this technology, a zinc-rich portion of the waste can be separated (usually captured in a baghouse) and sent for further zinc recovery in a different HTMR system. The majority of the chromium and nickel is partitioned into the remelt alloy.

The chromium/nickel HTMR recovery process described above achieves a different level of performance than the HTMR processes designed to recover only zinc. This is believed to be due to

the differences in metal concentrations of the feed materials (in particular, higher nickel and chromium) and the inherent differences in design of the respective HTMR processes. Therefore, the Agency is proposing to establish a separate set of treatment standards for the K061 high zinc nonwastewaters that contain recoverable levels of nickel and chromium. EPA is proposing to reserve the concentration-based standards for nickel and chromium until additional data are collected. The Agency is aware of ongoing activities to collect performance data for this nickel/chromium recovery process when it is used to treat K061 nonwastewaters in the low zinc subcategory (that also contain recoverable levels of chromium and nickel), and anticipates developing standards for these constituents based on these tests. However, the Agency is specifically soliciting data and comment on the recovery of chromium and nickel from K061 nonwastewaters in the high zinc subcategory.

PROPOSED BDAT TREATMENT STANDARDS FOR K061

[Nonwastewaters—High Zinc Subcategory with equal to or greater than 1.5% chromium/nickel combination]

Regulated constituent	Maximum for any single composite sample, TCLP (mg/l)
Antimony	1.0
Arsenic	0.028
Barium	4.9
Beryllium	0.0031
Cadmium	0.027
Chromium (Total)	(1)
Lead	0.37
Mercury	0.0031
Nickel	(1)
Selenium	0l.29
Silver	0.15
Thallium	0.029
Vanadium	0.10
Zinc	0.23

[1] Reserved.

4. Use of Other Recovery Technologies

The Agency has preliminary information indicating that other non-thermal recovery processes exist that could potentially be used to recover metals from K061 nonwastewaters in both the low zinc and high zinc subcategories. These processes use a series of primarily hydrometallurgical technologies including chemical precipitation, ion exchange, and electrowinning. The process vendors claim that these processes generate no residues for land disposal. However, the Agency currently has no data that verify these claims nor does it have any performance data for these recovery systems. If these recovery processes do not generate any solid waste residues, they will not be precluded from use by today's proposed rule when it is finalized and can be used to recover metals from K061 nonwastewaters provided the wastes are processed in accordance with all other land disposal restrictions. The Agency solicits data on these other recovery technologies.

C. Delisting of HTMR Nonwastewater Residues

1. Introduction

The Agency is also proposing that the nonwastewater residues, such as slag, resulting from HTMR in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, and rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (12)) be delisted from the hazardous waste regulations provided they satisfy the conditions described below and provided the residues do not exhibit one or more of the hazardous waste characteristics. EPA notes that the issue of the relationship between delisting levels and land disposal restriction treatment standards is a subject of frequent comment. Even though one standard is based on the performance of treatment technology and the other is based on evaluation of risk, it would be desirable to establish some connection between the two, given that the treatment standards minimize a waste's toxicity and mobility and the delisting process evaluates whether a waste is still capable of posing a substantial threat to human health and the environment if it is mismanaged. In this proposal, the Agency is combining the two concepts. EPA is proposing this action in order to encourage the use of HTMR, which EPA regards as the best treatment for K061 wastes because it conserves resources through recovery of metals and substantially immobilizes the metals that are unavailable for recovery.

The Agency is proposing to delist the nonwastewater residues resulting from HTMR processing of K061 waste (both low zinc and high zinc subcategories) provided that these residues meet the promulgated treatment standards for all constituents, and provided the residues do not exhibit hazardous characteristics. As noted earlier, EPA is proposing treatment standards for all of the Appendix VIII metals that might reasonably be expected to be present in the nonwastewater residues from processing K061 wastes by HTMR in order to allow a generic delisting determination. (See RCRA section 3001(f) requiring EPA to evaluate whether toxic constituents in addition to those for which a waste is listed could make a waste hazardous.) The Agency has evaluated the treatment standard levels using its vertical and horizontal spread (VHS) landfill model, which predicts the potential for groundwater contamination from wastes that are landfilled. See 50 FR 7882 (Feb. 26, 1985), 50 FR 48896 (Nov. 27, 1985) and the RCRA public docket for this notice for a detailed description of the VHS model and its parameters. EPA solicits comment on the use of the VHS model for this purpose.

Using the treatment standard levels and a waste volume of greater than 10,000 cubic yards per facility (a worst case estimate for purposes of the VHS model), EPA determined that concentrations of arsenic, barium, beryllium, cadmium, chromium, mercury, nickel, selenium, silver and vanadium in HTMR nonwastewater residues would be below the levels used in delisting decision-making. These levels are presented in the Addendum to the K061 Background Document.

Antimony is an appendix VIII hazardous constituent and has been identified in some samples of nonwastewater residues from the high temperature metals recovery of K061. EPA has data on 11 samples of nonwastewater residues from HTMR which showed antimony to be present in the TCLP extract at a concentration of between less than 0.02 (nondetectable levels) and 0.853 mg/l. These levels would meet the BDAT limit proposed today; however, some of the samples would not be below the levels calculated with the VHS model used in the delisting program. Therefore, the Agency is proposing in the alternative to establish the antimony standard at the level calculated using the VHS model. To arrive at this level, the Agency is using the proposed drinking water maximum contaminant level (MCL) for antimony (see 55 FR 30370) times the predictive dilution and attenuation factor from the VHS model.

The Agency is requesting comment on whether the samples and analytical data the Agency possesses are typical or representative of antimony concentrations in these nonwastewater residues, if there are certain wastes (if any) that would be expected to contain antimony more than others, on the potential process changes that could reduce or eliminate the mobility of antimony in the residues, and on the alternative standards proposed.

In addition to antimony, the levels for lead and thallium calculated using the

VHS model are lower than the proposed treatment standards; consequently, the Agency is proposing, in the alternative, to establish these levels as the concentration standards for these constituents. However, EPA believes that the BDAT methodology is actually responsible for the proposed standards for lead and thallium being higher than the levels calculated using the VHS model; in fact, all our data for these metals show nondetectable levels that are less than the delisting levels. Following BDAT methodology, however, the Agency calculated today's proposed treatment standards based on the highest reported detection limits from a wide range of detection limits. The Agency is soliciting information on whether it is appropriate to use lower detection limits in the treatment standard calculation for these metals, which would result in treatment standards that would be below the levels used in delisting decision making.

EPA is proposing that nonwastewater K061 residues from HTMR processes be delisted if they meet the concentration-based treatment standards, rather than the levels calculated using the VHS model for lead and thallium, since all our data show nondetectable levels. However, as noted in the preceding paragraph, the ultimate standards for lead and thallium may be lower than those proposed. For antimony, the Agency believes that additional data provided in response to this proposal will demonstrate that a significantly lower treatment standard that also satisfies delisting criteria can be achieved.

EPA solicits further comment on whether the nonwastewater residues from HTMR should also be evaluated for delisting purposes by considering alternative exposure scenarios—that is, other than disposal in a landfill. While the Agency believes that its current delisting criteria are conservative, we believe that other exposure scenarios may be appropriate for these wastes because the majority of the slag is presently not disposed of in landfills or piles, but rather is put to further use, principally as road base material in highway construction, or as an anti-skid agent (i.e., direct application to road surfaces). The situation here thus differs from other delistings the Agency has processed in that the land disposal scenario that the Agency evaluates through modelling is not the primary means of waste management, and, more importantly, may not represent a reasonable worse case situation. Thus, with respect to use of the slag as an anti-skid agent, the pathway of concern could involve direct exposure through surface runoff or from air-blown dust, and the environmental concern would therefore be the total concentration of toxic metals in the slag rather than the leachable fraction. Use of the slag in a road base, on the other hand, may be analogous to a capped landfill, in which case the VHS model is probably an appropriate analytical tool. (Indeed, since it models an uncapped disposal unit, the model may evaluate a more stringent situation than road base usage.)

Consequently, in order to evaluate the appropriateness of delisting the residues when considering their actual disposition, EPA solicits comment on what routes of exposure would be significant and how the use of these residues as anti-skid material could be evaluated. EPA also solicits comment on the use as road-base material and the appropriateness of using the VHS model to evaluate potential hazards posed by this type of management. The Agency will evaluate this information in determining whether to delist these residues, and what the scope of the delisting might be.

2. Proposed Testing Requirements

Both the land disposal restriction and delisting programs typically impose testing requirements in order to verify that regulatory requirements have been satisfied. EPA is proposing here that the land disposal restriction testing requirements also be used to ensure that the residues are properly considered nonhazardous wastes. Under these requirements, treatment facilities must test treated wastes at a frequency specified in their waste analysis plan to determine whether they have satisfied the treatment standard. See Section 268.7(b) and 55 FR at 22669 (June 1, 1990) (treaters and disposers must do some testing to assure treatment standards are met). EPA solicits comment on whether more detailed testing requirements are necessary. For example, EPA solicits comment on requiring that composite samples of the residues be collected and analyzed at least twice a year, twice a quarter, each month, or weekly, and when process inputs change significantly. Please also see the Addendum to the K061 Background Document for an example of an alternative testing frequency.

3. Applicability to Other Types of Treated K061

EPA is proposing that the delisting discussed above for these K061 wastes apply only to those nonwastewater residues generated by HTMR processes. One major reason for this is that the analytical data used to develop the treatment standards are based on analysis of residues of an HTMR process rather than stabilization. A second major reason is that the chemical bonding that occurs in the high temperature and oxidation/reduction conditions within the HTMR units is inherently different than the bonding that forms the basis of cementitious and pozzolanic stabilization. In addition, the kinetics of the reaction forming the bonds in these HTMR processes are vastly superior to the kinetics of bond formation in cementitious reactions. (Cement is not typically considered set until at a minimum of 72 hours and often not considered fully cured until after 28 days.) Stabilization has also been documented as a process that is highly matrix-dependent and prone to chemical interferences. Most commercial stabilization facilities have to develop special mixes for each waste type by selecting additives that will enhance curing time and/or product integrity (often measured by comprehensive strength.)

While the Agency prefers HTMR over stabilization for K061 wastes in the high zinc subcategory, the Agency does support stabilization as an alternative for many metal-bearing wastes. In fact, the Agency is not precluding the use of stabilization by today's proposed rule, and site-specific delisting remains a viable option for stabilized K061 wastes. However, due to the inherent differences between HTMR and stabilization stated above and the fact that insufficient data currently exists to propose a generic delisting for stabilized K061 wastes, the Agency is not proposing that the generic delisting levels for HTMR nonwastewater residues are applicable to stabilized K061 residues that have not undergone HTMR. The Agency believes that more individualized consideration of stabilization processes is warranted before residues from the process are delisted.

In addition, the Agency believes that HTMR is preferred for managing the K061 dust over stabilization technologies, in light of its resource recovery potential, and in light of the large differences in volumes of treated wastes that require disposal versus the generation of a delisted, nonhazardous waste. Nevertheless, the Agency solicits comment on these points.

D. Capacity Determinations

1. Waste Generation

In the First Third rule, EPA used data from the Treatment, Storage, Disposal,

and Recovery (TSDR) survey and estimated the total generation of K061 wastes (both high and low zinc) to be 345,000 tons per year. For the capacity analysis for the high zinc K061 wastes, the Agency assumed that 75 percent of the total K061 volume generated is in the high zinc subcategory (i.e., 260,000 tons). More recent estimates of K061 waste generation data have been submitted by Horsehead Resource Development Company (HRD) and by the American Iron and Steel Institute (AISI). HRD is the primary commercial facility that is currently recovering zinc from K061 wastes in HTMR units. HRD estimates that in 1991, the national generation of high zinc K061 will be approximately 500,000 tons. AISI, a trade organization representing a substantial portion of the generators of all K061 wastes, provides a different estimate of K061 generation. Based on steel production in 1989, AISI estimates that approximately 285,000 tons of high zinc K061 was generated in 1989, which is consistent with data from the TSDR Survey. The Agency recognizes the discrepancy in the estimates of the generation of high zinc K061 and requests additional data on this issue. However, for purposes of this capacity analysis, EPA used the higher estimate of 500,000 tons of high zinc K061.

In the following discussions and capacity analysis, the Agency did not specifically break out the high zinc K061 wastes which also contain a combined nickel/chromium content of greater than 1.5 percent because the Agency believes that they represent a relatively small volume of wastes and because the Agency has no information indicating that there are problems with HTMR capacity for these wastes.

2. Current Management Practices

The Agency has received data indicating that most high zinc K061 (about 90 percent) currently goes through HTMR. The volume of high zinc K061 being stabilized and subsequently land disposed is thus quite low. The Agency believes that this may be due to the existing incentives to recycle high zinc K061. Stabilization and landfilling costs are high, and some states have provided tax incentives not to land dispose. Thus, generators currently are recycling their wastes.

3. Available Capacity

Based on information received by EPA, HTMR capacity for 1991 is estimated to be approximately 553,000 tons. The following facilities account for this capacity:

- Two HRD plants are currently operating with a total annual capacity of 355,000 tons.
- A new HRD facility in Rockwood, Tennessee is adding 80,000 tons to nationwide annual capacity.
- Zia Technology is building a zinc recovery facility capable of processing 60,000 tons per year of K061.
- Laclede Steel Company has contracted with Elkelm to construct a 40,000 tons per year capacity HTMR furnace. This facility will process wastes from Laclede generated on-site and will reduce the demand for commercial HTMR capacity.
- International Mill Services (IMS) is currently operating two thermal dust treatment plants with a combined yearly capacity of 18,000 tons to handle all the electric arc furnace dust generated by IMS. The Florida steel operation is a 6,000 ton per year HTMR facility in Jackson, Tennessee; the facility in Blytheville, Arkansas, which has a capacity of 12,000 tons per year, became operational in the spring of 1989.

In addition to these facilities, Waste Management Inc. (WMI) indicated in comments to the Third Third proposed rule that they had completed a proposal to own and operate a high temperature metals recovery facility in the Jackson, Mississippi area with an annual capacity of 100,000 tons. WMI indicated that they were seeking commitments from generators prior to starting construction on the facility. However, EPA currently has no information on whether WMI is proceeding with this facility.

For the purpose of analyzing alternative capacity, the Agency has also assumed that stabilization for high zinc K061 may be able to meet the proposed concentration-based treatment standards. As of May 8, 1990, there was excess capacity for stabilization of over 1.3 million metric tons.

4. Capacity Implications

Based on the information described above, HTMR capacity is being developed to handle the 1991 demand for K061 recovery, and excess stabilization capacity also is available. Therefore, EPA believes there is sufficient capacity to handle the volumes of high zinc K061 requiring treatment. EPA is requesting comment on this analysis, and the Agency requests any additional data on the generation and management of high zinc K061.

III. State Authority

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's proposal for treatment standards is proposed pursuant to section 3004(d) of RCRA. Therefore, it will be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. As noted above, EPA will implement today's proposal in authorized States until 'heir programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are

substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. The deadline by which the States must modify their programs to adopt today's proposed rule is July 1, 1993. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

With respect to the proposed delisting, today's proposal would not be effective in authorized States since the regulations would not be imposed pursuant to HSWA. Thus, the regulation would be applicable only in those States that do not have interim or final authorization. In authorized States, the regulations would not be applicable until the State revised its program to adopt equivalent regulations under State law.

Section 40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State must modify its program to adopt this proposed regulation will be determined by the promulgation of the final rule in accordance with section 40 CFR 271.21(e). These deadlines can be extended in certain cases (see section 40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become subtitle C RCRA requirements.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. The proposed delisting would be considered to be less stringent or would reduce the scope of the existing Federal regulations. Therefore, authorized States would not be required to modify their programs to adopt regulations equivalent or substantially equivalent.

States with authorized RCRA programs may already have requirements similar to those in today's proposal. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in section 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

C. State Implementation

The Administrator of EPA is solely responsible for granting variances to the effective dates because these determinations must be made on a national basis. In addition, it is clear that RCRA section 3004(h)(3) intends for the Administrator to grant case-by-case extensions after consulting the affected States, on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be authorized for this aspect of the program.

Under section 40 CFR 268.44, the Agency may grant waste-specific variances from treatment standards in cases where it can be demonstrated that the physical and/or chemical properties of the wastes differ significantly from wastes analyzed in developing the treatment standards, and the wastes cannot be treated to specified levels or treated by specified methods.

The Agency is solely responsible for granting such variances since the result of such an action may be the establishment of a new waste treatability group. All wastes meeting the criteria of these new waste treatability groups may also be subject to the treatment standard established by the variance. Granting such variances may have national impacts; therefore, this aspect of the program is not delegated to the States at this time.

Under section 40 CFR 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous. States which have the authority to impose restrictions may be authorized under RCRA section 3006 to grant petitions for exemptions from the restrictions. Decisions on site-specific petitions do not require the national perspective required to restrict wastes or grant extensions. EPA will be handling "no migration" petitions at Headquarters, though the States may be authorized to grant these petitions in the future. The Agency expects to gain valuable experience and information from review of "no migration" petitions which may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish notice of the Agency's final decision on petitions in the Federal Register.

IV. Regulatory Impact

A. Executive Order 12291

Executive Order 12291 requires that the regulatory impact of potential Agency actions be evaluated as part of the process of developing regulations. In addition, Executive Order 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis in connection with major rules (section 3). Major rules are defined in section 1(b) as those which are likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

Today's proposed rule establishes treatment standards for a waste originally regulated in the First Third land disposal restrictions rule (53 FR 31162). In the First Third rule, the Agency set a treatment standard of "no land disposal" for the high zinc subcategory of K061 nonwastewaters based on the determination that high temperature metals recovery represents BDAT for the waste. Due to a shortage in high temperature metals recovery capacity, an interim numerical standard based on the performance of stabilization technology was established until August 1990. In the Third Third rule, this interim standard was extended for one year.

The Regulatory Impact Analysis (RIA) for the First Third rule costed the K061 high zinc wastes based on HTMR. The post-regulatory cost for a volume of K061 high zinc waste of approximately 172,000 tons was estimated to be $58 million per year (1987 dollars).

Today's proposed rule establishes numerical treatment standards based on HTMR. Currently, due to construction of additional recovery process capacity, the Agency has determined that there is adequate HTMR capacity for K061 high zinc wastes. The Agency estimates that approximately 500,000 tons of K061 high zinc are generated each year. Of this volume, the Agency estimates approximately 90% to be undergoing treatment by use of HTMR, with the remaining 10% going to stabilization.

Therefore, in the worst case assumption, only 10% of high zinc K061 would be affected by today's rule. If the 10% annual generation portion of high zinc K061 which is now being treated by stabilization was to be treated by HTMR, the incremental cost of this change is estimated to be $1 million per year. This alteration in management practices represents the most severe cost scenario which could be incurred as a result of this rule. However, delisting the slag residue from the HTMR process will spare the industry subtitle C disposal costs and allow them to continue selling the slag as road aggregate; this revenue has not been reflected in the annual incremental cost estimate provided above, and would make the cost lower than the $1 million estimated. Therefore, it is estimated that this proposed rule will not impose a large cost upon industry, and is estimated to be a minor rule according to Executive Order 12291.

This rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to issue a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis which describes the impact of the rule on small entities (i.e., small business, small organizations, and small government jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. Since the proposed rule would allow the regulated community to continue to use existing management practices, and in the worst case scenario only affects 10% of high zinc K061 waste, the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities, and therefore, does not require a Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

All information collection requirements in this proposed rule were promulgated in previous land disposal restriction rulemakings and approved by the Office of Management and Budget (OMB) at that time. Since there are no new information collection requirements being promulgated today, an Information Collection Request has not been prepared.

List of Subjects in 40 CFR Parts 261, 268, and 271

Hazardous Waste Reporting and Recordkeeping Requirements.

Dated: April 8, 1991.

F. Henry Habicht,

Deputy Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In § 261.3 paragraph (c)(2)(ii)(C) is added to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(c) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061 waste (both low zinc and high zinc), in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (12)), provided that these residues meet part 268 treatment standards for all constituents.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.41, Table CCWE is amended by removing the entry for K061 (High Zinc Subcategory—greater than 15% Total Zinc—Effective until August 7th 1991) and by adding entries for K061 (High Zinc Subcategory with less than 1.5% chromium/nickel combination) and K061 (High Zinc Subcategory with greater than 1.5% chromium/nickel combination) to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE.—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
*	*	* * *	*	*	*		
K061 High zinc subcategory with less than 1.5% chromium/nickel combination.	Electric Arc Furnace Dust.	Table 2 in 268.42, Table CCW in 268.43.	Antimony			1.0	
			Arsenic			0.028	
			Barium			4.9	
			Beryllium			0.0031	
			Cadmium			0.027	
			Chromium (total)			0.065	
			Lead			0.37	
			Mercury			0.0031	
			Nickel			0.16	
			Selenium			0.29	
			Silver			0.15	
			Thallium			0.029	
			Vanadium			0.10	
			Zinc			0.23	
K061 High zinc subcategory with greater than 1.5% chromium/nickel combination.	Electric Arc Furnace Dust.	Table 2 in 268.42, Table CCW in 268 43.	Antimony			1.0	
			Arsenic			0.028	
			Barium			4.9	
			Beryllium			0.0031	
			Cadmium			0.027	
			Chromium (total)			Reserved	
			Lead			0.37	
			Mercury			0.0031	
			Nickel			Reserved	
			Selenium			0.29	
			Silver			0.15	
			Thallium			0.029	
			Vanadium			0.10	
			Zinc			0.23	
*	*	* * *	*	*	*		

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

2. Section 271.1(j) is amended by adding the following entry to table 1 in chronological order, and by adding the following entry to table 2 in chronological order:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
[Insert date of publication of final rule in the Federal Register.	Land disposal restrictions for K061 high zinc subcategory nonwastewaters.	[Insert Federal Register page numbers].	Aug. 8, 1991.
*	*	*	*

* * * * *

TABLE 2.—SELF IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	*	*	*
Aug. 8, 1991	Land disposal restrictions on K061 high zinc subcategory.	3004(g)(6)(A)	[Insert date of publication] 55 FR [insert Federal Register page numbers].
*	*	*	*

* * * * *

[FR Doc. 91-8667 Filed 4-11-91; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
April 12, 1991

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Restrictions on Certain Flights From the United States to Iraq or Kuwait; Final Rule; Amendment

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26380; Special Federal Aviation Regulation (SFAR) No. 61-1]

Restriction on Certain Flights From the United States to Iraq or Kuwait

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; amendment.

SUMMARY: This action amends the Special Federal Aviation Regulation (SFAR), which restricts the operation of certain cargo flights from the United States to the Republic of Iraq or the State of Kuwait. This amendment removes the restrictions on operations to Kuwait. Issuance of this amendment implements and is fully consistent with United Nations (UN) Security Council Resolution 686 (1991), in that it permits commercial flights into Kuwait in support of the reconstruction of that country.

DATES: *Effective date:* April 9, 1991. *Expiration date:* November 9, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila Hughes Rodriguez, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft throughout the world. Under section 103 of the Federal Aviation Act of 1958 (Act), as amended, the FAA is charged with the regulation of air commerce in a manner to best promote safety and fulfill the requirements of national security.

On August 9, 1990, the President, exercising his authority under, *inter alia*, the United Nations Participation Act, issued Executive Order 12725, which, among other things, imposed a number of transportation-related sanctions on Kuwait, which was then occupied by the military forces of Iraq (55 FR 33091, August 13, 1990). Executive Order 12725 revoked Executive Order 12723, issued on August 2, 1990, to the extent it was inconsistent with the earlier order (55 FR 31805, August 2, 1990). On August 15, 1990, the Department of Transportation (DOT) implemented these sanctions in DOT Order 90-8-36. That Order amended all certificates issued under section 401 of the Federal Aviation Act (the Act), all permits issued under section 402, and all exemptions from sections 401 and 402 of the Act to prohibit holders from selling or engaging in transportation by air to Kuwait or engaging in any transaction relating to transportation to or from Iraq.

On November 9, 1990, in response to potentially hazardous circumstances in the Persian Gulf, and to meet obligations under international law, the FAA issued temporary restrictions on cargo-carrying flights from the United States to Iraq and Kuwait (SFAR 61, 55 FR 47298, November 9, 1990). As noted in the preamble to the final rule, SFAR 61 contains an expiration date of November 9, 1991, but can be terminated sooner or extended as circumstances warrant.

On March 2, 1991, following the conclusion of Operation Desert Storm and Iraq's withdrawal from Kuwait, the UN Security Council adopted resolution 686. Paragraph 6 of Resolution 686 requests UN member states to "take all appropriate action to cooperate with the government and people of Kuwait in the reconstruction of their country." On March 8, 1991, the President sent to Congress his notice of intent to terminate the sanctions imposed on Kuwait pursuant to Executive Orders 12723 and 12725. The notice provided for a comment period which closed on March 26, 1991.

On March 7, 1991, in response to Resolution 686 and in anticipation of the removal of prohibitions on certain financial transactions contained in Executive Order 12725, the Department of the Treasury issued an amendment to the Kuwaiti Assets Control Regulations to authorize certain transactions with respect to Kuwait (56 FR 10356, March 11, 1991).

On March 21, 1991, by Order 91-3-42, the Department issued a blanket exemption from the provisions of Order 90-8-36 affecting certificates, permits and exemptions issued under title IV of the Act. That Order also removed the condition in Kuwait Airways Corporation's exemption regarding moving its aircraft into Kuwait.

Copies of UN Resolution 686 (1991), Exec. Order Nos. 12723 and 12725, and Dot Orders 90-8-36 and 91-3-42 have been placed in the docket for this rulemaking.

Removal of Restrictions on Flights Leaving the United States for Kuwait

On the basis of the above, and after consultation with the Department of State, I find that the circumstances which originally justified the adoption of temporary restrictions on flights leaving the United States for Kuwait have changed. Specifically, landing and overflight restrictions adopted by countries situated between the United States and the Gulf area, which formerly presented a hazard to flights and persons onboard such flights, have been removed following the conclusion of Operation Desert Storm and the issuance of Resolution 686.

Although this action removes the restrictions on flights leaving the United States for Kuwait established by SFAR 61, the FAA notes that as of this date, operating conditions at Kuwait International Airport are unclear. The operations specifications of U.S. air carriers currently place certain restrictions on operations at that airport, and the amendment of SFAR 61 has no effect on these restrictions. The FAA is currently monitoring conditions at Kuwait International Airport to determine whether such restrictions can be modified to permit resumption of service. As a result, the safety of operations by U.S. carriers into Kuwait International Airport is addressed through carrier operations specifications, and the removal of the restrictions in SFAR 61 will not affect safety by permitting an otherwise unsafe flight to occur.

Accordingly, in consideration of UN Resolution 686 and the anticipated lifting of sanctions imposed by Executive Order Nos. 12723 and 12725, the FAA is amending SFAR 61 to remove restrictions on flights to Kuwait, effective immediately. This action represents a return to the status quo for domestic and foreign air carrier certificate holders. For these reasons, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Furthermore, because this action relieves a restriction, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully

consistent with my obligations under section 1102(a) of the Federal Aviation Act to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

The expiration date of SFAR 61–1 is November 9, 1991.

Regulatory Evaluation

This action will impose no additional burden on domestic and foreign air carrier certificate holders. Because the removal of the restriction on flights leaving the United States for Kuwait represents a return to the status quo, the costs associated with the adoption of this amendment are negligible.

The benefits associated with the adoption of this amendment include the increased revenues to air carriers providing commercial service between the United States and Kuwait. This amendment implements DOT Order 91–3–42; therefore, a further regulatory evaluation will not be conducted.

Conclusion

The FAA has determined that this action (1) Is not a "major rule" under Executive Order 12291; and (2) is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Republic of Iraq, State of Kuwait.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by P.L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; P.L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By removing Special Federal Aviation Regulation (SFAR) No. 61 and adding new Special Federal Aviation Regulation (SFAR) No. 61–1 in its place to read as follows:

Special Federal Aviation Regulation No. 61–1.

Restriction on Certain Cargo Flights from the United States to the Republic of Iraq.

1. *Applicability.* This rule applies to all cargo-carrying operations in the United States.

2. *Special flight restrictions.* Except as provided in paragraph 3 of this SFAR—

(a) No person may operate an aircraft or initiate a flight carrying cargo from any point in the United States to any point in Iraq, or to any intermediate destination on a flight the ultimate destination of which is the Republic of Iraq; and

(b) No person may operate an aircraft destined to land in Iraq over the territory of the United States.

3. *Permitted operations.* This SFAR shall not prohibit the takeoff of an aircraft, the initiation of a flight, or the overflight of United States territory by an aircraft—

(a) Carrying food in humanitarian circumstances, subject to authorization by the United Nations (UN) Security Council or the Committee established by UN Resolution 661 (1990) and in accordance with UN Resolution 666 (1990);

(b) Carrying supplies intended strictly for medical purposes or solely for the United Nations Iran-Iraq Military Observer Group; or

(c) If the operator agrees to land at an airport designated by the United States Government in order to permit inspection to ensure that there is no cargo on board in violation of Resolution 661 (1990) or Resolution 670 (1990).

4. *Expiration.* This special rule expires November 9, 1991.

Issued in Washington, DC on April 9, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–8718 Filed 4–9–91; 4:56 pm]

BILLING CODE 4910–13–M

Reader Aids

Federal Register

Vol. 56, No. 71

Friday, April 12, 1991

INFORMATION AND ASSISTANCE

FEDERAL REGISTER PAGES AND DATES, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

Proposed Rules:
64.....14049–14052, 14225
68.....14052, 14225
73.....13445, 14052–14054, 14226, 14227, 14495
90.....13791

48 CFR

Proposed Rules:
Ch. 53.....13608
31.....14302
32.....14302
47.....14298
52.....14298
515.....13301
543.....13301
552.....13301, 14675, 14676
570.....14676

49 CFR

1.....13772
533.....13773
571.....13784

Proposed Rules:
27.....13856
37.....13856, 14341
71.....13609
571.....14342, 14495, 14909

50 CFR

17.....13598
285.....13415
611.....13365
644.....13416
663.....13365
672.....13418, 13786, 14480, 14652
685.....14866

Proposed Rules:
17.....14055, 14677, 14678, 14910
222.....14055
285.....13610
625.....13303
646.....14496
685.....13611

LIST OF PUBLIC LAWS

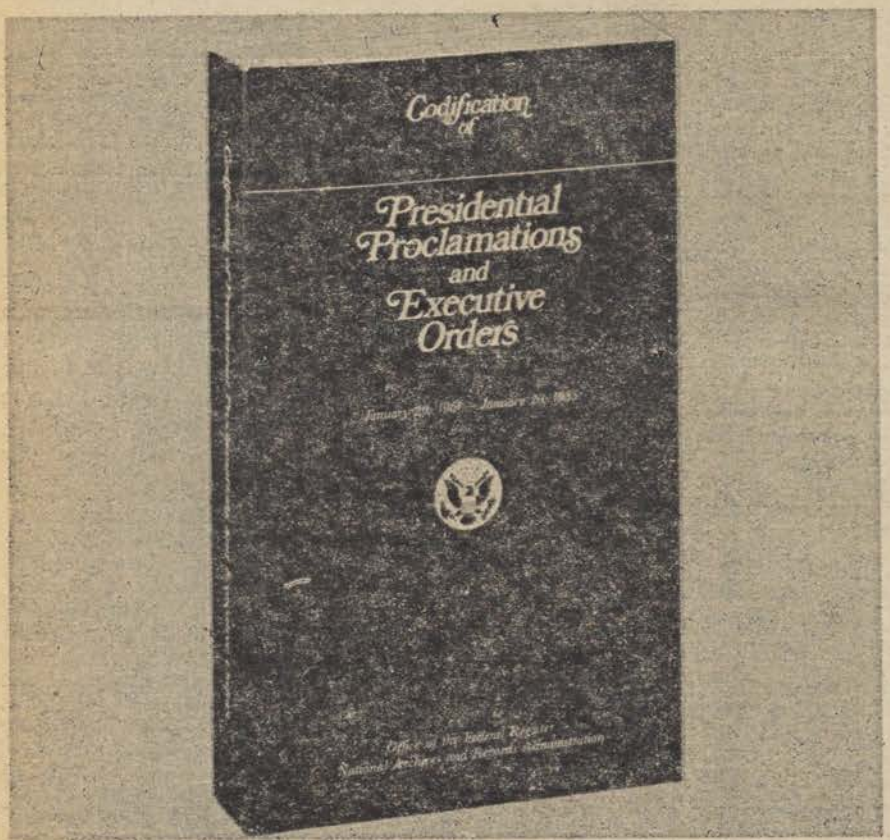
Last List April 11, 1991

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

H.R. 1285/Pub. L. 102–26

Higher Education Technical Amendments of 1991. (Apr. 9, 1991; 105 Stat. 123; 7 pages) Price: $1.00

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Superintendent of Documents **Publications** Order Form

Order Processing Code:
***6661**

P3

Charge your order. It's easy!

MasterCard VISA

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS, S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

7-89

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325